

FEDERAL REGISTER

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Washington, Friday, December 20, 1963

Contents

Agricultural Marketing Service

PROPOSED RULE MAKING:	
Milk; decision on proposed amendments to tentative marketing agreements and orders:	
Certain marketing areas.....	13899
Louisville - Lexington - Evansville marketing area.....	13902
Oranges, navel, grown in Arizona and designated part of California; expenses and rate of assessment for 1963-64.....	13899

Agricultural Stabilization and Conservation Service

RULES AND REGULATIONS:	
Beet sugar area; determination of sugar commercially recoverable from sugarbeets.....	13863

Agriculture Department

See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Federal Crop Insurance Corporation.

Civil Aeronautics Board

NOTICES:	
<i>Hearings, etc.:</i>	
S.A. Empresa de Viacao Area Rio Grandense (VARIG).....	13905
South Pacific Air Lines and Pan American World Airways, Inc.....	13905
Western Alaska Airlines, Inc.....	13907

Comptroller of the Currency

PROPOSED RULE MAKING:	
International operations of national banks.....	13868

Federal Aviation Agency

RULES AND REGULATIONS:	
Control zone and transition areas; alteration and designation.....	13864
Transition areas and control area extension; designation and revocation.....	13864

Federal Crop Insurance Corporation

RULES AND REGULATIONS:	
Crop insurance; 1961 and succeeding crop years:	
Barley.....	13863
Corn.....	13863
Cotton.....	13863
Safflower.....	13863
Soybean.....	13863

Federal Housing Administration

RULES AND REGULATIONS:	
Delegations of basic authority and functions; Assistant Commissioner-Comptroller and Deputy and Insurance Officer and Deputy.....	13865

Federal Power Commission

NOTICES:	
<i>Hearings, etc.:</i>	
Calaveras County Water District.....	13907
El Paso Natural Gas Co.....	13907
Mississippi River Fuel Corp.....	13908
Pan American Petroleum Corp., et al.....	13908

Federal Trade Commission

RULES AND REGULATIONS:	
Prohibited trade practices:	
Robbin, Al and A. Robbin & Co.....	13864
Winston Sales Co., Inc.....	13865

Housing and Home Finance Agency

See Federal Housing Administration.

Interior Department

See Land Management Bureau.

Internal Revenue Service

PROPOSED RULE MAKING:	
Income tax:	
Export trade corporations.....	13890
Receipt of minimum distributions by domestic corporations.....	13868

Interstate Commerce Commission

NOTICES:	
Fourth section applications for relief.....	13916
Motor carrier transfer proceedings.....	13915
Rutland Railroad Corp.; rerouting of traffic.....	13916

Labor Department

See Wage and Hour Division.

Land Management Bureau

RULES AND REGULATIONS:	
Public land orders:	
Arizona and California.....	13866
New Mexico.....	13867
Utah.....	13865
Wyoming.....	13866

Securities and Exchange Commission

NOTICES:	
<i>Hearings, etc.:</i>	
Corporate Trust Shares.....	13911
First Midwest Capital Corp.....	13911

Treasury Department

See Comptroller of the Currency; Internal Revenue Service.

Wage and Hour Division

NOTICES:	
Certificates authorizing employment of full-time students working outside of school hours in retail or service establishments at special minimum rates.....	13912
Certificates authorizing employment of learners at special minimum rates.....	13914

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

3 CFR

EXECUTIVE ORDERS:

May 27, 1913 (revoked in part by
PLO 3291) ----- 13865

7 CFR

401 (5 documents) ----- 13863

831 ----- 13863

PROPOSED RULES:

907 ----- 13899

1005 ----- 13899

1034 ----- 13899

1035 ----- 13899

1037 ----- 13899

1046 ----- 13902

1049 ----- 13899

12 CFR

PROPOSED RULES:

15 ----- 13868

14 CFR

71 [New] (2 documents) ----- 13864

16 CFR

13 (2 documents) ----- 13864, 13865

24 CFR

200 ----- 13865

26 CFR

PROPOSED RULES:

1 (2 documents) ----- 13868, 13890

43 CFR

PUBLIC LAND ORDERS:

3291 ----- 13865

3292 ----- 13866

3293 ----- 13866

3295 ----- 13867

Announcing first

5-year Cumulation

UNITED STATES STATUTES AT LARGE

TABLES OF LAWS AFFECTED in Volumes 70-74

Lists all prior laws and other Federal instruments which were amended, repealed, or otherwise affected by the provisions of public laws enacted during the years 1956-1960. Includes index of popular name acts affected in Volumes 70-74.

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Rules and Regulations

Title 7—AGRICULTURE

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

APPENDIX; COUNTY DESIGNATED FOR BARLEY CROP INSURANCE

Pursuant to authority contained in § 401.1 of the above-identified regulations, as amended, the following county is hereby added to the lists of counties published March 27, 1963, August 3, 1963, and August 30, 1963, which were designated for barley crop insurance for the 1964 crop year.

UTAH

Cache

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL]

JOHN N. LUFT,

Manager,

Federal Crop Insurance Corporation.

[F.R. Doc. 63-13183; Filed, Dec. 19, 1963; 8:48 a.m.]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

APPENDIX; COUNTY DESIGNATED FOR CORN CROP INSURANCE

Pursuant to authority contained in § 401.1 of the above-identified regulations, as amended, the following county is hereby added to the list of counties published August 17, 1963, which were designated for corn crop insurance for the 1964 crop year.

WISCONSIN

LaCrosse

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL]

JOHN N. LUFT,

Manager,

Federal Crop Insurance Corporation.

[F.R. Doc. 63-13184; Filed, Dec. 19, 1963; 8:48 a.m.]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

APPENDIX; COUNTIES DESIGNATED FOR COTTON CROP INSURANCE

Pursuant to authority contained in § 401.1 of the above-identified regulations, as amended, the following counties

are hereby added to the list of counties published August 17, 1963, which were designated for cotton crop insurance for the 1964 crop year.

TENNESSEE

Henderson

NORTH CAROLINA

Pitt

TEXAS

Deaf Smith

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL]

JOHN N. LUFT,

Manager,

Federal Crop Insurance Corporation.

[F.R. Doc. 63-13185; Filed, Dec. 19, 1963; 8:48 a.m.]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

APPENDIX; COUNTIES DESIGNATED FOR SAFFLOWER CROP INSURANCE

Pursuant to authority contained in § 401.1 of the above-identified regulations, as amended, the following counties have been designated for safflower crop insurance for the 1964 crop year.

NEBRASKA

Cheyenne

Deuel

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL]

JOHN N. LUFT,

Manager,

Federal Crop Insurance Corporation.

[F.R. Doc. 63-13186; Filed, Dec. 19, 1963; 8:49 a.m.]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

APPENDIX; COUNTY DESIGNATED FOR SOYBEAN CROP INSURANCE

Pursuant to authority contained in § 401.1 of the above-identified regulations, as amended, the following county is hereby added to the list of counties published August 20, 1963, which were designated for soybean crop insurance for the 1964 crop year.

MICHIGAN

Hillsdale

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL]

JOHN N. LUFT,

Manager,

Federal Crop Insurance Corporation.

[F.R. Doc. 63-13187; Filed, Dec. 19, 1963; 8:49 a.m.]

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER E—DETERMINATION OF SUGAR COMMERCIALY RECOVERABLE

[Sugar Determination 831.4; Amdt. 5]

PART 831—BEET SUGAR AREA

1963 and Subsequent Crops

Pursuant to the provisions of section 302(a) of the Sugar Act of 1948, as amended, § 831.4 of this chapter (24 F.R. 6991, 7499, 25 F.R. 7521, 26 F.R. 8150, 27 F.R. 7819) is hereby amended by amending paragraph (b) (3) thereof to read as follows:

§ 831.4 Determination of sugar commercially recoverable from sugarbeets.

* * * * *

(b) Recoverable sugar. * * *

(3) In the case of sugarbeets of the 1963 and subsequent crops marketed under a "combined individual-cossette test" contract, the amount of sugar (expressed in hundredweight) established by multiplying the net tonnage of the sugarbeets, at the time of delivery to a processor, by a rate expressed in hundredweight of sugar per ton of beets (rounded to three decimals). Such rate shall be computed by (i) multiplying 20 hundredweight (one ton) by the percentage of sugar content on which settlement under the marketing contract is made, and (ii) multiplying the result obtained under subdivision (i) of this subparagraph (3) by the simple average of the extraction rates for the sugarbeet crops in the base period, as adjusted to raw sugar value by multiplying by 1.07. Notwithstanding the foregoing, the rate of commercially recoverable sugar on which a partial Sugar Act payment may be based and disbursed to a producer shall be computed by multiplying 20 hundredweight by the weighted average percentage of sugar content of all beets delivered by such producer, and then multiplying the result by 75 percent of the simple average of the extraction rates for the sugarbeet crops in the base period, as adjusted to raw value by multiplying by 1.07.

* * * * *

Statement of bases and considerations. In settlement areas wherein sugarbeets are marketed under a "combined individual-cossette test" contract, the percentages of sugar content on which settlement under the marketing contract is made for a crop year cannot be determined until all of the sugarbeets marketed in the settlement area for such crop have been processed. This is generally several months after all beets have been harvested and delivered to the processor. Since the Sugar Act payments are based on these percentages of sugar content, there is normally a considerable delay between the time a producer de-

livers his beets and the time he receives his Sugar Act payment.

This amendment provides a method of making partial Sugar Act payments to growers in these areas, eliminating in part the hardship caused by this delay in receipt of these payments.

Accordingly, I hereby find and conclude that the aforesaid amendment will effectuate the applicable provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Secs. 302, 303, 304, 61 Stat. 930, as amended, 931; 7 U.S.C. 1132, 1133, 1134)

Effective date. Date of publication.

Signed at Washington, D.C., on December 16, 1963.

CHARLES S. MURPHY,
Acting Secretary.

[F.R. Doc. 63-13172; Filed, Dec. 19, 1963;
8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

SUBCHAPTER E—AIRSPACE [NEW]

[Airspace Docket No. 63-CE-51]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

Alteration of Control Zone and Designation of Transition Areas

On August 15, 1963, a Notice of Proposed Rule Making was published in the *FEDERAL REGISTER* (28 F.R. 8376) stating that the Federal Aviation Agency proposed to designate transition areas at Moline, Ill., and Clinton, Iowa, and alter the Moline control zone.

Interested persons were afforded an opportunity to participate in the rule-making through submission of comments. All comments received were favorable.

Subsequent to publication of the Notice, the place name identification of the radio beacon used in the description of the Moline transition area has been changed from Moline to Davenport, Iowa. This change is reflected in the action taken herein.

The substance of the proposed amendments having been published and for the reasons stated in the Notice, the following actions are taken:

1. In § 71.171 (27 F.R. 220-91, November 10, 1962), the Moline, Ill., control zone is amended to read:

Moline, Ill.

Within a 5-mile radius of the Quad City Airport (latitude 41°26'55" N., longitude 90°30'30" W.), within 2 miles each side of the Quad City ILS localizer W course, extending from the 5-mile radius zone to the OM; and within 2 miles each side of the Quad City ILS localizer E course, extending from the 5-mile radius zone to the INT of the Quad City ILS localizer E course and the Cordova, Ill., 199° radial.

2. In § 71.181 (27 F.R. 220-139, November 10, 1962), the following transition areas are added:

Moline, Ill.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Quad City Airport (latitude 41°26'55" N., longitude 90°30'30" W.); within 5 miles N and 8 miles S of the Quad City ILS localizer W course, extending from 1 mile E to 12 miles W of the OM; within a 5-mile radius of the Davenport, Iowa, Municipal Airport (latitude 41°38'40" N., longitude 90°35'20" W.); and within 5 miles each side of the 224° and 044° bearings from the Davenport RBN, extending from the Davenport Municipal Airport to 12 miles SW of the RBN; and that airspace extending upward from 1,200 feet above the surface bounded on the N by latitude 41°55'00" N., on the E by longitude 89°50'00" W., on the S by latitude 41°10'00" N., and on the W by longitude 91°00'00" W.

Clinton, Iowa

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Clinton Municipal Airport (latitude 41°49'45" N., longitude 90°19'50" W.), within 2 miles each side of the Cordova VOR 338° radial, extending from the 5-mile radius area to the VOR; and within 8 miles SW and 5 miles NE of the 324° bearing from the Clinton Municipal Airport, extending from the airport to 12 miles NW of the airport.

These amendments shall become effective 0001 e.s.t., April 30, 1964.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 13, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-13156; Filed, Dec. 19, 1963;
8:45 a.m.]

[Airspace Docket No. 63-CE-64]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS [NEW]

Designation of Transition Areas and Revocation of Control Area Extension

On August 3, 1963, a Notice of Proposed Rule Making was published in the *FEDERAL REGISTER* (28 F.R. 7956) stating that the Federal Aviation Agency proposed to designate transition areas at Burlington, Iowa, and Galesburg, Ill., and revoke the Burlington control area extension.

Interested persons were afforded an opportunity to participate in the rule-making through submission of comments. All comments received were favorable.

The substance of the proposed amendments having been published and for the reasons stated in the Notice, the following actions are taken:

1. In § 71.181 (27 F.R. 220-139, November 10, 1962) the following transition areas are added:

Burlington, Iowa

That airspace extending upward from 700 feet above the surface within 2 miles each side of the 185° bearing from the Burlington Municipal Airport (latitude 40°47'05" N., longitude 91°07'25" W.), extending from the arc of a 5-mile radius circle centered on the Burlington Municipal Airport to 7.5 miles south of the airport; and that airspace extending upward from 1,200 feet above the surface bounded by a line extending from latitude 41°10'00" N., longitude 91°00'00"

W.; to latitude 41°10'00" N., longitude 90°00'00" W.; thence S. to latitude 40°35'20" N., longitude 90°00'00" W.; thence W. via latitude 40°35'20" N. to the Burlington VOR 235° radial; thence clockwise along the arc of a 14-mile radius circle centered on the Burlington Municipal Airport to longitude 91°00'00" W.; thence to point of beginning.

Galesburg, Ill.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Galesburg Municipal Airport (latitude 40°56'30" N., longitude 90°25'50" W.), and within 2 miles each side of the 025° bearing from the Galesburg Municipal Airport extending from the 5-mile radius area to 8 miles NE of the airport.

2. In § 71.165 (27 F.R. 220-59, November 10, 1962) the following control area extension is revoked: Burlington, Iowa.

These amendments shall become effective 0001 e.s.t., April 30, 1964.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 13, 1963.

H. B. HELSTROM,
Acting Chief,
Airspace Utilization Division.

[F.R. Doc. 63-13157; Filed, Dec. 19, 1963;
8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 8532]

PART 13—PROHIBITED TRADE PRACTICES

Al Robbin and A. Robbin & Company

Subpart—Importing, selling, or transporting Flammable wear: § 13.1060 *Importing, selling, or transporting flammable wear.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies Sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191.) [Cease and desist order, Al Robbin trading as A. Robbin & Company, Chicago, Ill., Docket 8532, Nov. 15, 1963]

In the Matter of Al Robbin an Individual Trading as A. Robbin & Company

Order requiring a Chicago importer, wholesaler and retailer of fabric piece goods to cease violating the Flammable Fabrics Act by importing or selling in commerce any fabric—including silk illusion used for the manufacture of bridal and communion veils—which was so highly flammable as to be dangerous when worn.

The order to cease and desist is as follows:

It is ordered. That the respondent Al Robbin, an individual trading as A. Robbin & Company, or under any other trade name, and his representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

- Importing into the United States; or
- Selling, offering for sale, introducing, delivering for introduction, trans-

porting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported for the purpose of sale or delivery after sale in commerce;

any fabric, which, under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is further ordered. That respondent, Al Robbin, shall, within sixty (60) days after service upon him of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist contained in the initial decision.

Issued: November 15, 1963.

By the Commission.

[SEAL]

JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 63-13158; Filed, Dec. 19, 1963;
8:45 a.m.]

[Docket 8531]

PART 13—PROHIBITED TRADE PRACTICES

Winston Sales Co., Inc.

Subpart—Advertising falsely or misleadingly: § 13.155 *Prices*; § 13.155-40 *Exaggerated as regular and customary*; § 13.170 *Qualities or properties of product or service*; § 13.170-30 *Durability or permanence*; § 13.170-70 *Preventive or protective*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply Sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Winston Sales Co., Inc., Chicago, Ill., Docket 8531, Nov. 22, 1963]

In the Matter of Winston Sales Co., Inc., a Corporation

Order requiring a Chicago distributor to cease misrepresenting his merchandise by such practices as video demonstrations purportedly proving that a certain kitchen knife would never become dull by using it to saw a nail in half, when the nail had been partially cut through prior to the demonstration and the cutting edge used in slicing a tomato to demonstrate that the sharpness had not been affected, was not the same edge used to cut the nail; and misrepresenting the regular prices for the knife and a food chopper in offering both for the purported usual price of one.

The order to cease and desist is as follows:

It is ordered. That respondent Winston Sales Co., Inc., a corporation, and its officers, and respondent's agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of kitchen knives and food choppers, or any other products, in commerce, as "commerce" is defined in

the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that respondent's kitchen knives will not become dull;

2. Using the term "retail price" or any other words of similar import or meaning to describe a price higher than the usual and customary retail price of any such merchandise in the trade area or areas where the representation is made;

3. Misrepresenting in any manner the savings available to purchasers of respondent's merchandise;

4. Advertising any product by presenting a visual test or demonstration represented to be actual proof of a claim made for the product, where the test or demonstration does not constitute actual proof because of manipulating the product in a misleading manner, tampering with the object on which it is demonstrated, or employing any other misleading illusion.

5. Misrepresenting, in any manner, directly or by implication, the quality or merits of respondent's knives.

By "Order Modifying and Adopting Initial Decision", order requiring report of compliance is as follows:

It is further ordered. That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form in which respondent has complied with this order.

Issued: November 22, 1963.

By the Commission.

[SEAL]

JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 63-13159; Filed, Dec. 19, 1963;
8:45 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Housing and Home Finance Agency

SUBCHAPTER A—GENERAL

PART 200—INTRODUCTION

Subpart D—Delegations of Basic Authority and Functions

In § 200.77 paragraphs (h) and (w) are amended to read as follows:

§ 200.77 Assistant Commissioner-Comptroller and Deputy.

* * * * *

(h) To recommend investments for the insurance funds of FHA, liquidation of investments and redemption of debentures, to execute assignments in connection with the redemption of debentures held for the account of the insurance funds of FHA, and to maintain liaison with the Treasury Department in the execution of fiscal proposals.

* * * * *

(w) To issue duplicate Mortgage Insurance Certificates, to cancel or cause

to be cancelled under his direction insurance endorsement or the Mortgage Insurance Certificate on insured mortgages where a joint request for termination is made by the mortgagor and mortgagee, or when the insurance endorsement or the Mortgage Insurance Certificate is otherwise to be cancelled, and to exercise the authority of the Commissioner in any instance which is subject to the approval of the Commissioner in connection with the prepayment or voluntary termination of insured mortgages.

* * * * *

In § 200.79 paragraph (d) is amended to read as follows:

§ 200.79 Insurance Officer and Deputy.

* * * * *

(d) To cancel the insurance endorsement or the Mortgage Insurance Certificate on insured mortgages when a joint request for termination is made by the mortgagor and mortgagee, or when the insurance endorsement or the Mortgage Insurance Certificate is otherwise to be cancelled.

* * * * *

(Sec. 2, 48 Stat. 1246, as amended; Sec. 211, 52 Stat. 23, as amended; Sec. 607, 55 Stat. 61, as amended; Sec. 712, 62 Stat. 1281, as amended; Sec. 907, 65 Stat. 301, as amended; Sec. 807, 69 Stat. 651, as amended; 12 U.S.C. 1703, 1715b, 1742, 1747k, 1748f, 1750f)

Issued at Washington, D.C., December 16, 1963.

PHILIP N. BROWNSTEIN,
Federal Housing Commissioner.

[F.R. Doc. 63-13181; Filed, Dec. 19, 1963;
8:48 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 3291]

[Utah 0120763]

UTAH

Power Site Restoration No. 600; Opening Lands From Power Withdrawal; Project No. 290

By virtue of the authority vested in the President by section 1 of the act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141), and pursuant to Executive Order No. 10355 of May 26, 1952, and determination DA-159-Utah of the Federal Power Commission issued June 26, 1963, it is ordered as follows:

1. The Executive Order of May 27, 1913, creating Power Site Reserve No. 363, is hereby revoked so far as it affects the following-described lands:

SALT LAKE MERIDIAN

T. 16 S., R. 7 E.,
Sec. 35, N $\frac{1}{2}$.

Containing 320 acres.

2. In DA-159-Utah, the Federal Power Commission vacated the withdrawal created on March 29, 1922, pursuant to

RULES AND REGULATIONS

the filing of an application for license for Project No. 290, so far as it affects the lands described in paragraph 1 hereof.

3. The lands are hereby restored to the operation of the public land laws, effective at 10:00 a.m. on January 18, 1964, subject to valid existing rights, the requirements of applicable law, and the provisions of existing withdrawals. Applications received at or prior to 10:00 a.m. on January 18, 1964, shall be considered as simultaneously filed at that time. Those thereafter received shall be considered in the order of filing. The State of Utah has waived its preference right of application provided by subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852) and its preferred right to apply for the reservation of the lands required for a right-of-way or a source of materials under the provisions of section 24 of the Federal Power Act (41 Stat. 1075; 16 U.S.C. 818).

4. The lands have been open to applications and offers under the mineral leasing laws, and to location under the United States mining laws, subject to the provisions of the act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621).

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Salt Lake City, Utah.

JOHN A. CARVER, Jr.,

Assistant Secretary of the Interior.

DECEMBER 13, 1963.

[F.R. Doc. 63-13160; Filed, Dec. 19, 1963; 8:45 a.m.]

[Public Land Order 3292]

[Wyoming 0266529 etc.]

WYOMING

Withdrawing Lands for Reclamation Purposes; Partly Revoking Departmental Order of May 2, 1919

By virtue of the authority contained in section 3 of the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws, for use of the Bureau of Reclamation in connection with the reclamation projects indicated:

SIXTH PRINCIPAL MERIDIAN

(Wyoming 0266529)

Shoshone Extension Unit, Missouri River Basin Project

T. 51 N., R. 98 W.,
Sec. 29, lots 5 and 11;
Sec. 32, lot 30;
Tracts 76-O, 76-P and 87-A (in secs. 20 and 29).

T. 52 N., R. 98 W.,
Tracts 66-O and 66-P (in sec. 36).

T. 52 N., R. 101 W.,
Sec. 1, lot 1;
Sec. 11, lots 5 and 6;
Sec. 14, lots 1, 2, 55-J and $E\frac{1}{2}NW\frac{1}{4}$.

The areas described aggregate approximately 459 acres.

SIXTH PRINCIPAL MERIDIAN

(Wyoming 0256627)

Frannie Division, Shoshone Project

T. 57 N., R. 97 W.,
Sec. 8, $SW\frac{1}{4}NW\frac{1}{4}$ and $NW\frac{1}{4}SW\frac{1}{4}$.

Containing 80 acres.

2. The lands will continue to be administered by the Bureau of Land Management until such time as they are needed for project purposes.

3. The departmental order of May 2, 1919, and any other order or orders which withdrew lands for reclamation purposes are hereby revoked so far as they affect the following described land:

SIXTH PRINCIPAL MERIDIAN

(Wyoming 0256485)

T. 52 N., R. 95 W.,
Sec. 11, lot 23.
T. 52 N., R. 102 W.,
Sec. 33, lot 1;
Secs. 34 and 35, lots 1 and 2.

The areas described aggregate 10.23 acres.

4. Until 10:00 a.m. on June 13, 1964, the State of Wyoming shall have a preferred right of application to select the land described in paragraph three of this order, in accordance with subsection (c) of section 2 of the Act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852). On and after that date and hour the land shall become subject to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications, except preference rights applications from the State, received at or prior to 10:00 a.m. on June 13, 1964, shall be considered as simultaneously filed at that time. The land has been open to applications and offers under the mineral leasing laws. It will be open to location under the United States mining laws at 10:00 a.m. on June 13, 1964.

Inquiries concerning the land should be addressed to the Manager, Land Office, Bureau of Land Management, Cheyenne, Wyoming.

JOHN A. CARVER, Jr.,

Assistant Secretary of the Interior.

DECEMBER 13, 1963.

[F.R. Doc. 63-13161; Filed, Dec. 19, 1963; 8:45 a.m.]

[Public Land Order 3293]

[Arizona 032538 and Sacramento 071184]

ARIZONA AND CALIFORNIA

Withdrawal for Forest Service Administrative Sites, Recreation Areas and Roadside Zone

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the minerals in the following-described national forest lands in Arizona and California, in the national forests hereafter named, are hereby withdrawn from prospecting, location, entry, and purchase under the mining laws of the United

States, in aid of programs of the Forest Service, Department of Agriculture, for utilization of the surface as administrative sites and recreation areas, and for protection of existing forest roads and highways and adjacent roadside zone, as indicated:

ARIZONA

(Arizona 032538)

GILA AND SALT RIVER MERIDIAN TONTO NATIONAL FOREST

Desert Vista Site

T. 4 N., R. 8 E. (Unsurveyed),
Sec. 27, $N\frac{1}{2}SE\frac{1}{4}$ and $S\frac{1}{2}NE\frac{1}{4}$.

The areas described aggregate 160 acres.

CALIFORNIA

(Sacramento 071184)

MOUNT DIABLO MERIDIAN, SIERRA NATIONAL FOREST

Forest Development Road No. 4500, Roadside Zone

A strip of land 200 feet on each side of the centerline of the Mammoth Road through the following subdivisions:

T. 6 S., R. 24 E.,
Sec. 1, lots 9, 10, $E\frac{1}{2}SW\frac{1}{4}$, $SW\frac{1}{4}SW\frac{1}{4}$ and $NW\frac{1}{4}SE\frac{1}{4}$;

Sec. 2, $SE\frac{1}{4}$ and $SE\frac{1}{4}SW\frac{1}{4}$.

T. 5 S., R. 25 E.,
Sec. 30, lots 3 and 4;
Sec. 31, lot 1, $E\frac{1}{2}NW\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$ and $W\frac{1}{2}SE\frac{1}{4}$.

T. 6 S., R. 25 E.,
Sec. 6, lots 2, 3, 5, and $SE\frac{1}{4}NW\frac{1}{4}$.

Clover Forest Station Administrative Site

T. 5 S., R. 25 E.,
Sec. 6, $W\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$ and $E\frac{1}{2}SE\frac{1}{4}NW\frac{1}{4}$.

Minarets Ranger Station Administrative Site

T. 6 S., R. 24 E.,
Sec. 16, $W\frac{1}{2}NE\frac{1}{4}$.

China Bar Recreation Area

*T. 6 S., R. 24 E.,
Sec. 25, $SW\frac{1}{4}$ less 36.5 acres within Mammoth Pool Project No. 2085, and $S\frac{1}{2}NW\frac{1}{4}$;

Sec. 26, $E\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$ and $SE\frac{1}{4}NE\frac{1}{4}$.

Mammoth Pool Recreation Area

T. 7 S., R. 24 E.,
Sec. 2, $W\frac{1}{2}W\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$ outside of Mammoth Pool Project No. 2085;
Sec. 3, $SE\frac{1}{4}$ less 33 acres in Mammoth Pool Project No. 2085, $SW\frac{1}{4}NE\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$, and $E\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$ less 1.3 acres in Mammoth Pool Project No. 2085.

Fuller Meadow Recreation Area

T. 6 S., R. 24 E.,
Sec. 35, $S\frac{1}{2}SE\frac{1}{4}$ outside of Mammoth Pool Project No. 2085.

Lower Chiquito Recreation Area

T. 5 S., R. 24 E.,
Sec. 31, $E\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$;

Sec. 32, $W\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$.

T. 6 S., R. 24 E.,
Sec. 5, $W\frac{1}{2}$ lot 5, $NE\frac{1}{4}SW\frac{1}{4}$;

Sec. 6, lots 8, 10, 14, $S\frac{1}{2}$ lot 7, $E\frac{1}{2}$ lot 9, $S\frac{1}{2}$ lot 11, and $E\frac{1}{2}E\frac{1}{2}SE\frac{1}{4}$;

Sec. 7, lots 1, 2, $E\frac{1}{2}$ lot 3, $E\frac{1}{2}$ lot 4, $W\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$, and $W\frac{1}{2}E\frac{1}{2}SW\frac{1}{4}$;

Sec. 8, $W\frac{1}{2}NW\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$, and $NW\frac{1}{4}SE\frac{1}{4}SW\frac{1}{4}$;

Sec. 18, $E\frac{1}{2}$ lot 1, $E\frac{1}{2}$ lot 2, $NE\frac{1}{4}$ lot 3, $E\frac{1}{2}NW\frac{1}{4}$, $S\frac{1}{2}NE\frac{1}{4}$, $N\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$, and $NW\frac{1}{4}NW\frac{1}{4}SE\frac{1}{4}$.

Vista Point Recreation Area

T. 7 S., R. 24 E.,
Sec. 16, S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.

Upper Chiquito Recreation Area

T. 5 S., R. 23 E.,
Sec. 13, W $\frac{1}{2}$ NW $\frac{1}{4}$.

Jackass Rock Recreation Area

T. 6 S., R. 24 E.,
Sec. 1, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 12, N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.

Sweetwater Recreation Area

T. 6 S., R. 24 E.,
Sec. 33, NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.

Logan Meadow Recreation Area

T. 6 S., R. 24 E.,
Sec. 33, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 34, S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.
T. 7 S., R. 24 E.,
Sec. 3, N $\frac{1}{2}$ lot 4;
Sec. 4, NE $\frac{1}{4}$ lot 1.

The areas described aggregate approximately 2,836 acres.

JOHN A. CARVER, JR.,
Assistant Secretary of the Interior.

DECEMBER 13, 1963.

[F.R. Doc. 63-13162; Filed, Dec. 19, 1963;
8:46 a.m.]

[Public Land Order 3295]

[New Mexico 0467959]

NEW MEXICO**Revoking Air Navigation Site
Withdrawal No. 126**

By virtue of the authority contained in section 4 of the Act of May 24, 1928 (45 Stat. 729; 49 U.S.C. 214), it is ordered as follows:

The Departmental Order of May 16, 1939, which withdrew the following-described land as Air Navigation Site Withdrawal No. 126, is hereby revoked:

NEW MEXICO PRINCIPAL MERIDIAN

T. 22 S., R. 3 E.,
Sec. 8, W $\frac{1}{2}$.

The area described contains approximately 320 acres. The land has been patented.

JOHN A. CARVER, JR.,
Assistant Secretary of the Interior.

DECEMBER 16, 1963.

[F.R. Doc. 63-13163; Filed, Dec. 19, 1963;
8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

[12 CFR Part 15]

INTERNATIONAL OPERATIONS OF NATIONAL BANKS

Notice of Proposed Rule Making

Notice is hereby given that the Comptroller of the Currency, pursuant to the authority contained in the National Bank Act, as amended, 12 U.S.C. 1 et seq., is considering the adoption of a new Part 15 relating to the international operations of national banks.

Prior to the adoption thereof, consideration will be given to any written comments pertaining thereto which are submitted in duplicate to the Comptroller of the Currency, Washington, D.C., by February 1, 1964. All national banks and other interested parties are invited to submit such comments. It is contemplated that the new Part 15 will enter into effect on or about February 15, 1964, with such revisions thereof which may be deemed appropriate in light of comments submitted.

The proposed new Part 15 would read as follows:

PART 15—INTERNATIONAL OPERATIONS OF NATIONAL BANKS

Sec.

- 15.1 Scope and application.
- 15.2 Definitions.
- 15.3 Applications.
- 15.4 Consideration of applications.
- 15.5 Saving provision.
- 15.6 Forms.

§ 15.1 Scope and application.

This part applies to any transaction defined herein as an international operation.

§ 15.2 Definitions.

For the purposes of this part:

(a) "Foreign banking corporation" means any bank or corporation chartered or incorporated under the laws of the United States or of any state thereof, including any corporation organized under 12 U.S.C., sections 611 to 632, which is principally engaged in international or foreign banking or financing or banking or financing in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions.

(b) "International operation" means:

(1) The establishment or relocation of a branch of a national bank in a foreign country, dependency or insular possession of the United States.

(2) The establishment or relocation by a foreign banking corporation controlled by a national bank of any branch or agency in the United States or abroad.

(3) The acquisition by a national bank of stock in a foreign banking corporation.

(4) The acquisition by a national bank, directly or indirectly, of controlling interest in:

(i) A bank or other corporation or association organized under foreign law, or;

(ii) A corporation organized under the laws of any State, dependency or insular possession of the United States and principally engaged in business abroad.

(5) Any similar or related transaction as the Comptroller of the Currency may rule to be an "international operation".

§ 15.3 Applications.

(a) On and after the effective date hereof, a national bank desiring to engage in any international operation shall make application to the Comptroller of the Currency for approval. No such transaction shall be entered into prior to receiving the approval of the Comptroller of the Currency. Approval of such applications shall be subject to such terms and conditions as the Comptroller of the Currency may prescribe.

(b) Applications shall be made on forms as provided by the Comptroller of the Currency.

§ 15.4 Consideration of applications.

In passing upon an application for approval of an international operation the following factors will be considered:

(a) The general financial condition of the bank, including the adequacy of its capital and surplus in relation to the character and condition of its assets and its deposit liabilities and other corporate responsibilities.

(b) The general character and ability of the management of the bank.

(c) The history of the bank's activities, if any, in international banking or financing.

(d) Whether the bank has sufficient capital and surplus to meet legal requirements.

(e) Whether the proposed international operation is consistent with the interests of the United States.

§ 15.5 Saving provision.

This part shall not apply to any international operation which has been completed prior to the effective date hereof.

§ 15.6 Forms.

All forms referred to in this part and all such forms as amended from time to time shall be a part of this part.

Dated: December 16, 1963.

[SEAL]

JAMES J. SAXON,
Comptroller of the Currency.

[F.R. Doc. 63-13176; Filed, Dec. 19, 1963;
8:48 a.m.]

Internal Revenue Service

[26 CFR Part 1]

RECEIPT OF MINIMUM DISTRIBUTIONS BY DOMESTIC CORPORATIONS

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington, D.C., 20224, within the period of 60 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 60-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL]

BERTRAND M. HARDING,
Acting Commissioner
of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) to section 963 of the Internal Revenue Code of 1954, as added by section 12(a) of the Revenue Act of 1962 (76 Stat. 1006), such regulations are amended to include the following new sections, effective with respect to taxable years of foreign corporations beginning after December 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end:

§ 1.963 Statutory provisions; receipt of minimum distributions by domestic corporations.

Sec. 963. Receipt of minimum distributions by domestic corporations—(a) General rule. In the case of a United States shareholder which is a domestic corporation and which consents to all the regulations prescribed by the Secretary or his delegate under this section prior to the last day prescribed by law for filing its return of the tax imposed by this chapter for the taxable year, no amount shall be included in gross income under section 951(a)(1)(A)(i) for the taxable year with respect to the sub-

part F income of a controlled foreign corporation, if—

(1) In the case of a controlled foreign corporation described in subsection (c) (1), the United States shareholder receives a minimum distribution of the earnings and profits for the taxable year of such controlled foreign corporation;

(2) In the case of controlled foreign corporations described in subsection (c) (2), the United States shareholder receives a minimum distribution with respect to the consolidated earnings and profits for the taxable year of all such controlled foreign corporations; or

(3) In the case of controlled foreign corporations described in subsection (c) (3), the United States shareholder receives a minimum distribution of the consolidated earnings and profits for the taxable year of all such controlled foreign corporations.

(b) *Minimum distributions.* For purposes of this section, a minimum distribution with respect to the earnings and profits for the taxable year of any controlled foreign corporation or corporations shall, in the case of any United States shareholder, be its pro rata share of an amount determined in accordance with the following table:

If the effective foreign tax rate is (percentage)—	The required minimum distribution of earnings and profits is (percentage)—
Under 10.....	90
10 or over but less than 20.....	86
20 or over but less than 28.....	82
28 or over but less than 34.....	75
34 or over but less than 39.....	68
39 or over but less than 42.....	55
42 or over but less than 44.....	40
44 or over but less than 46.....	27
46 or over but less than 47.....	14
47 or over.....	0

(c) *Amounts to which section applies—*

(1) *Foreign subsidiaries.* Subsection (a) (1) shall apply to amounts which (but for the provisions of this section) would be included in the gross income of the United States shareholder under section 951(a) (1) (A) (i) by reason of its ownership, within the meaning of section 958(a) (1) (A), of stock of a controlled foreign corporation.

(2) *Chain of controlled foreign corporations.* Subsection (a) (2) shall apply to amounts which (but for the provisions of this section) would be included in the gross income of the United States shareholder under section 951(a) (1) (A) (i)—

(A) By reason of its ownership, within the meaning of section 958(a) (1) (A), of stock of a controlled foreign corporation, and

(B) To the extent that the United States shareholder so elects, by reason of its ownership, within the meaning of section 958(a) (2), of stock of any other controlled foreign corporation (on account of its ownership of the stock described in subparagraph (A) or of stock described in this subparagraph), but only if there is taken into account the earnings and profits of each foreign corporation, whether or not a controlled foreign corporation, by reason of which the United States shareholder owns, within the meaning of section 958(a) (2), stock of such controlled foreign corporation.

(3) *All controlled foreign corporations.* Except as provided in paragraph (4), subsection (a) (3) shall apply to amounts which (but for the provisions of this section) would be included in the gross income of the United States shareholder under section 951(a) (1) (A) (i)—

(A) By reason of its ownership, within the meaning of section 958(a) (1) (A), of stock of all controlled foreign corporations in which it owns stock within the meaning of such section, and

(B) By reason of its ownership, within the meaning of section 958(a) (2), of stock

of all controlled foreign corporations in which it owns stock within the meaning of such section, but only if there is taken into account the earnings and profits of each foreign corporation, whether or not a controlled foreign corporation, by reason of which the United States shareholder owns, within the meaning of section 958(a), stock of any of such controlled foreign corporations.

(4) *Exceptions and special rules—*(A) *Less developed country corporations.* If the United States shareholder so elects, subsection (a) (3) and paragraph (3) of this subsection shall not apply to amounts which would be included in the gross income of such shareholder under section 951(a) (1) (A) (i) by reason of its ownership, within the meaning of section 958(a), of stock of controlled foreign corporations which are less developed country corporations (as defined in section 955(c)). This subparagraph shall not apply with respect to a less developed country corporation if, by reason of the ownership of the stock of such corporation, the United States shareholder owns, within the meaning of section 958(a) (2), stock of any other controlled foreign corporation which is not a less developed country corporation. Except as provided in the preceding sentence, an election under this subparagraph may be made only with respect to all controlled foreign corporations which are less developed country corporations and with respect to which the domestic corporation making the election is a United States shareholder.

(B) *Foreign branches.* In applying subsection (a) (3) and paragraph (3) of this subsection, if a United States shareholder so elects, all branches maintained by such shareholder in foreign countries, the Commonwealth of Puerto Rico, or possessions of the United States shall, under regulations prescribed by the Secretary or his delegate, be treated as wholly owned subsidiary corporations of such shareholder organized under the laws of such foreign countries, the Commonwealth of Puerto Rico, or possessions of the United States, as the case may be. Each branch so treated shall, for purposes of this section, be considered to have distributed to the United States shareholder all of its earnings and profits for the taxable year. This subparagraph shall not apply to a branch maintained by a United States shareholder in the Commonwealth of Puerto Rico or a possession of the United States unless—

(i) Such branch would be a controlled foreign corporation (as defined in section 957) if it were incorporated under the laws of the Commonwealth of Puerto Rico or the possession of the United States, as the case may be, and

(ii) The gross income of the United States shareholder for the taxable year includes income derived from sources within the Commonwealth of Puerto Rico and possessions of the United States.

(C) *Blocked foreign income.* If a United States shareholder so elects, the provisions of subsection (a) (3) and of paragraph (3) of this subsection shall not apply with respect to any foreign corporation, if it is established to the satisfaction of the Secretary or his delegate that the earnings and profits of such foreign corporation could not have been distributed to United States shareholders who own (within the meaning of section 958(a)) stock of such foreign corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country.

(d) *Effective foreign tax rate.* For purposes of this section, the term "effective foreign tax rate" means—

(1) With respect to a single controlled foreign corporation, the percentage which—

(A) The income, war profits, or excess profits taxes paid or accrued to foreign

countries or possessions of the United States by the controlled foreign corporation for the taxable year on or with respect to its earnings and profits for the taxable year, is of

(B) The sum of (i) the earnings and profits of the controlled foreign corporation described in subparagraph (A) and (ii) and the taxes described in subparagraph (A); and

(2) With respect to two or more foreign corporations, the percentage which—

(A) The total income, war profits, or excess profits taxes paid or accrued to foreign countries or possessions of the United States by such foreign corporations for the taxable year on or with respect to the consolidated earnings and profits of such foreign corporations for the taxable year, is of

(B) The sum of (i) the consolidated earnings and profits of such foreign corporations described in subparagraph (A) and (ii) the taxes described in subparagraph (A).

For purposes of the preceding sentence, in the case of any United States shareholder, the computation of the effective foreign tax rate applicable with respect to any controlled foreign corporation or corporations shall be made without regard to distributions made by such controlled foreign corporation or corporations to such United States shareholder.

(e) *Special rules—*(1) *Year from which distributions are made.* For purposes of this section, the second sentence of section 902(c)

(1) shall apply in determining from the earnings and profits of what year distributions are made by any foreign corporation, except that the Secretary or his delegate may by regulations provide a period in excess of 60 days in lieu of the 60-day period prescribed in such section.

(2) *Insufficient distributions.* If—

(A) A United States shareholder, in making its return of the tax imposed by this chapter for any taxable year, applies the provisions of this section with respect to any controlled foreign corporation,

(B) It is subsequently determined that this section did not apply with respect to such controlled foreign corporation for such taxable year due to the failure of the United States shareholder to receive a minimum distribution with respect to such controlled foreign corporation, and

(C) Such failure is due to reasonable cause, then a subsequent distribution made with respect to such controlled foreign corporation may, if made at a time and in a manner prescribed by the Secretary or his delegate by regulations, be treated, for purposes of this chapter, as having been made for, and received in, the taxable year of the United States shareholder for which such shareholder applied the provisions of this section.

(3) *Affiliated groups of corporations.* An affiliated group of corporations which makes a consolidated return under section 1501 for the taxable year, may, if it so elects, be treated as a single United States shareholder for purposes of applying this section for the taxable year.

(f) *Regulations.* The Secretary or his delegate shall prescribe such regulations as he may deem necessary to carry out the provisions of this section, including regulations for the determination of the amount of foreign tax credit in the case of distributions with respect to the earnings and profits of two or more foreign corporations.

[Sec. 963 as added by sec. 12(a), Rev. Act 1962 (76 Stat. 1006)]

§ 1.963-1 Exclusion of subpart F income upon receipt of minimum distribution.

(a) *In general—*(1) *Purpose of section 963.* Section 963 sets forth an exception to section 951(a) (1) (A) (i) by providing that a corporate United States

shareholder may exclude from its gross income the subpart F income of a controlled foreign corporation if such shareholder elects to and does receive a distribution of the earnings and profits of such foreign corporation sufficient to bring the aggregate United States and foreign income taxes on the pretax earnings and profits of that corporation to a percentage level approaching the United States tax rate on the income of a domestic corporation. The election to receive this so-called minimum distribution may be made with respect to a "single first-tier corporation" or a "chain" or "group" of controlled foreign corporations. This section defines the terms "single first-tier corporation," "chain," "group," and certain other terms and prescribes the manner in which the election to receive the benefits of section 963 is to be made. Section 1.963-2 provides that the amount of the minimum distribution is to be determined by applying to the statutory table prescribed in section 963(b) the effective foreign tax rate on the earnings and profits of the controlled foreign corporation or, in the case of an election to receive a minimum distribution from a chain or group, the effective foreign tax rate on the consolidated earnings and profits of the chain or group. Sections 1.963-3 and 1.963-4, respectively, describe the manner in which earnings and profits or consolidated earnings and profits are to be computed and the manner in which the effective foreign tax rate on such earnings and profits is to be determined. Section 1.963-5 specifies the types of distributions that count toward a minimum distribution. Section 1.963-6 provides that the requirement for making a minimum distribution from a chain or group may be satisfied either by making a pro rata minimum distribution, or by making a non pro rata minimum distribution together with certain deferral adjustments in the amount of foreign tax credit allowable to the United States shareholder. The manner of making these deferral adjustments, and certain other special rules for determining the allowable foreign tax credit in connection with a minimum distribution from a chain or group, are provided by § 1.963-7. Section 1.963-8 outlines the deficiency distribution procedure that may be followed if for reasonable cause a corporate United States shareholder fails to receive a complete minimum distribution for a taxable year for which it makes the election to receive a minimum distribution. Section 1.963-9 contains examples showing the application of the provisions of section 963.

(2) *Conditions for exclusion of subpart F income.* To qualify for an exclusion under section 963 for any taxable year with respect to the subpart F income of a controlled foreign corporation, a corporate United States shareholder must—

(i) Elect, on or before the 15th day of third month following the close of such taxable year, to receive a minimum distribution with respect to such foreign corporation for such taxable year;

(ii) Receive such a distribution during the distribution period specified in subparagraph (6) of this paragraph;

(iii) Consent, on or before such last day for making the election, to the regulations under section 963 applicable to such taxable year and to any amendments thereof duly prescribed on or before such last day. The making of the election under section 963 on or before such last day shall constitute the consent to the regulations under such section.

In the case of reasonable cause for delay in payment of a minimum distribution until after the period specified in subdivision (ii) of this subparagraph, see § 1.963-8 for the making of a deficiency distribution after such period.

(3) *Subpart F income excluded.* An exclusion under section 963 for a taxable year of a United States shareholder for which an election is made under such section shall apply only to the subpart F income for the taxable year—

(i) Of the single first-tier corporation to which the election applies if a minimum distribution is received by such shareholder from the earnings and profits for the taxable year of such corporation;

(ii) Of each controlled foreign corporation in the chain to which the election applies if a minimum distribution is received by such shareholder from the consolidated earnings and profits for the taxable year of such chain; and

(iii) Of each controlled foreign corporation in the group to which the election applies if a minimum distribution is received by such shareholder from the consolidated earnings and profits for the taxable year of such group.

Only those amounts attributable to the stock interest to which the election relates may be excluded. Thus, in case of a first-tier election with respect to stock of a controlled foreign corporation owned directly within the meaning of section 958(a)(1)(A), the corporate United States shareholder may not exclude any subpart F income which is includible in its gross income under section 951(a)(1)(A) (i) by virtue of its indirect ownership of stock of such corporation through the operation of section 958(a)(2). Subpart F income of a controlled foreign corporation which is excludable from the gross income of a United States shareholder by reason of the receipt of a minimum distribution to which section 963 applies shall not be considered to be excluded under section 954(b)(1) or section 970(a).

(4) *Failure to comply with minimum distribution requirement.* If a single first-tier corporation, chain, or group fails to make a minimum distribution for the taxable year on stock to which an election to receive a minimum distribution relates, the provisions of §§ 1.963-1 to 1.963-9, inclusive, shall have no effect by reason of such election.

(5) *Affiliated group of corporations.* An affiliated group of domestic corporations which makes a consolidated return under section 1501 for the taxable year shall be treated as a single United States shareholder for purposes of applying

section 963 for such year if the common parent corporation in its return for such affiliated group makes any first-tier election, chain election, or group election under section 963 for such affiliated group; in such case, no member of such affiliated group may separately make any first-tier election, chain election, or group election under section 963 for the taxable year.

(6) *Distribution period with respect to United States shareholder—*(i) *In general.* Except as provided by subdivision (ii) of this subparagraph, the distribution period with respect to the corporate United States shareholder for its taxable year shall begin immediately after the distribution period for the preceding taxable year and shall end with the close of the 15th day of the third month of the next succeeding taxable year. In case no election to receive a minimum distribution applied to the preceding taxable year, the distribution period for the taxable year shall begin with the 16th day of the third month of the taxable year.

(ii) *Extended distribution period.* In the case of any extension of time granted under section 6081 with respect to the taxable year of the corporate United States shareholder, if such shareholder so elects in the statement required to be filed under paragraph (c)(2)(ii) of this section, the distribution period for such year shall end with the close of the 15th day of the sixth month of the next succeeding taxable year.

(b) *Definitions.* For purposes of section 963 and §§ 1.963-1 to 1.963-9, inclusive—

(1) *Single first-tier corporation.* The term "single first-tier corporation" means a controlled foreign corporation described in paragraph (d) of this section with respect to which a first-tier election has been made for the taxable year.

(2) *Chain.* The term "chain" means collectively the foreign corporations described in paragraph (e) of this section with respect to which a chain election has been made for the taxable year.

(3) *Group.* The term "group" means collectively the foreign corporations described in paragraph (f) of this section with respect to which a group election has been made for the taxable year.

(4) *First-tier election, etc.* The term "first-tier election" means an election described in paragraph (c)(1)(i)(a) of this section; the term "chain election" means an election described in paragraph (c)(1)(i)(b) thereof; and the term "group election" means an election described in paragraph (c)(1)(ii) thereof.

(5) *Taxable year.* (i) The term "taxable year of a single first-tier corporation," "taxable year of a corporation in a chain," or "taxable year of a corporation in a group," means, respectively, the taxable year of such corporation ending with or within the taxable year of the electing United States shareholder for which is made under paragraph (c)(1) of this section the election establishing it as a single first-tier corporation, a

corporation in a chain, or corporation in a group, as the case may be.

(ii) The term "taxable year" when used in reference to a chain or group refers collectively to the taxable year of each of the foreign corporations in such group or chain to which applies the election establishing such chain or group status.

(6) *Foreign income tax.* The term "foreign income tax" means income, war profits, and excess profits taxes, and taxes included in the term "income, war profits, and excess profits taxes" by reason of section 903, paid or accrued to a foreign country or possession of the United States and taken into account for purposes of section 164(b) and sections 901 to 905, inclusive. Except in determining the foreign tax credit under section 901, the term shall not include any tax which is deemed paid by a foreign corporation under section 902(b).

(c) *Election to exclude subpart F income—(1) Foreign corporations included in election.* A corporate United States shareholder may for any taxable year exercise the election to receive a minimum distribution under section 963—

(i) (a) Separately with respect to any foreign corporation which as to such shareholder is described in paragraph (d) of this section, and/or

(b) Separately with respect to the foreign corporation or corporations which as to such shareholder are in a series described in paragraph (e) of this section, except to the extent of any interest (of such shareholder in any such corporation) with respect to which an election has otherwise been made under subdivision (i); or

(ii) With respect to all foreign corporations which as to such shareholder are described in paragraph (f) of this section.

(2) *Manner of making election.* The election to receive a minimum distribution and the consent to the regulations under section 963 shall be made for a taxable year—

(i) By filing with the return for such taxable year—

(a) A written statement stating that such election is made for such taxable year, and

(b) The names of the foreign corporations to which each election applies, the taxable year, country of incorporation, earnings and profits, taxes, and outstanding capital stock, of each such corporation, and such other information relating to the election made as the Commissioner may prescribe by instructions or schedules to support such return; or

(ii) In case of any extension of time granted under section 6081 with respect to a taxable year, by filing with the request for the first such extension of time a written statement stating that such election is made for such taxable year and setting forth the names of the foreign corporations to which each election applies.

(3) *Duration of election.* Any election under section 963 must be made for each taxable year of the United States shareholder and is effective only for the

taxable year for which made. Once an election is made for any taxable year by filing the return under subparagraph (2) (i) of this paragraph or by filing the statement under subparagraph (2) (ii) hereof, such election shall be irrevocable for that taxable year. However, an election made under subparagraph (2) (ii) of this paragraph may be treated, in the discretion of the Commissioner, as null and void if the United States shareholder fails to file with its return for such taxable year the information required to be filed under subparagraph (2) (i) (b) of this paragraph with respect to an election.

(d) *Corporations to which a first-tier election may apply—(1) Includible interests.* A corporate United States shareholder may make a first-tier election for the taxable year only with respect to a single controlled foreign corporation in which it owns stock directly within the meaning of section 958(a)(1)(A) and only with respect to the stock so owned. The election must apply to all of the stock so owned by such shareholder and shall relate only to the subpart F income of such corporation which would otherwise be required to be included in gross income by reason of owning such stock. The shareholder may for the same taxable year make a first-tier election with respect to one or more controlled foreign corporations in which it directly owns stock and not with respect to other controlled foreign corporations in which it directly owns stock.

(2) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). Domestic corporation M directly owns all the one class of stock in each of the controlled foreign corporations A, B, and C. Corporation M may make a first-tier election for a taxable year with respect to any one of A, B, and C Corporations; with respect to A and B Corporations, respectively; with respect to A and C Corporation, respectively; with respect to B and C Corporations, respectively; or with respect to A, B, and C Corporations, respectively.

Example (2). Domestic corporation M directly owns all the one class of stock of controlled foreign corporation A and 20 percent of the one class of stock of controlled foreign corporation B. Corporation A directly owns 80 percent of the stock of B Corporation. All such corporations use the calendar year as the taxable year. For 1964, M Corporation makes a first-tier election with respect to A and B Corporations, respectively, and receives a minimum distribution from each. An exclusion under section 963 for 1964 will be allowed for all of A Corporation's subpart F income for such year but only for the amount of B Corporation's subpart F income which M Corporation would (without regard to section 963) be required to include in gross income for such year under section 951(a)(1)(A)(i) by reason of directly owning 20 percent of the stock of B Corporation. Corporation M may not exclude any amount which it would be required (without regard to section 963) to include in gross income under section 951(a)(1)(A)(i) for such year with respect to the subpart F income of B Corporation by reason of its indirect ownership (through the operation of section 958(a)(2)) of 80 percent of the stock of B Corporation, unless M Corporation elects to and does receive a minimum distribution with respect to such interest. See paragraph (e) of this section relating to chain elections.

(e) *Corporations to which a chain election may apply—(1) Includible interests.* A corporate United States shareholder may make a chain election for the taxable year with respect to one or more controlled foreign corporations in a series which includes only one foreign corporation described in subdivision (i), one or more controlled foreign corporations described in subdivision (ii), and all foreign corporations described in subdivision (iii), of this subparagraph:

(i) A foreign corporation, whether or not a controlled foreign corporation, to the extent of stock owned by such shareholder—

(a) Directly (within the meaning of section 958(a)(1)(A)) in such corporation, or

(b) Indirectly (through the operation of section 958(a)(2)) by virtue of the direct ownership (within the meaning of section 958(a)(1)(A)) of stock in such corporation by a foreign trust, foreign estate, or foreign partnership, in which such shareholder is a beneficiary or partner;

(ii) To the extent that such shareholder so elects, any controlled foreign corporation to the extent that, by reason of its ownership of stock described in subdivision (i) of this subparagraph, such shareholder indirectly owns within the meaning of section 958(a)(2) stock in such controlled foreign corporation; and

(iii) All foreign corporations, whether or not controlled foreign corporations, by reason (and to the extent) of ownership of stock in which such shareholder indirectly owns within the meaning of section 958(a)(2) stock in the controlled foreign corporation described in subdivision (ii) of this subparagraph.

Notwithstanding the preceding sentence, a corporate United States shareholder may make a chain election for the taxable year with respect to a single foreign corporation if such foreign corporation is a controlled foreign corporation described in subdivision (i)(b) of this subparagraph. The shareholder may for the same taxable year make a chain election with respect to one or more series, and not with respect to other series, to which this subparagraph applies.

(2) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). Domestic corporation M directly owns all the one class of stock of controlled foreign corporation A which in turn directly owns 80 percent of the one class of stock of controlled foreign corporation B. Corporation M may make a chain election with respect to corporations A and B.

Example (2). Domestic corporation M directly owns all the one class of stock of controlled foreign corporation A which in turn directly owns 80 percent of the one class of stock of controlled foreign corporation B which in turn directly owns all the one class of stock of controlled foreign corporation C. Corporation M also directly owns 20 percent of the stock of B Corporation. Corporation M may make a chain election either with respect to corporations A and B or with respect to corporations A, B, and C. In either case corporations B and C can be included in the chain only to the extent of

M Corporation's indirect 80-percent stock interest in such corporations by reason of its direct ownership of 100 percent of the stock of A Corporation. Corporation M may also make a chain election with respect to corporations B and C, in which case the chain would include corporations B and C to the extent of the 20-percent stock interest which M Corporation owns directly in B Corporation, and indirectly owns in C Corporation by reason of its direct ownership of such stock interest in B Corporation.

Example (3). Domestic corporation M directly owns all the one class of stock of controlled foreign corporation A which in turn directly owns all the one class stock of controlled foreign corporations B and C. Corporation M may make a chain election either with respect to corporations A, B, and C; or with respect to corporations A and B; or with respect to corporations A and C.

Example (4). Domestic corporation M directly owns all the one class of stock of controlled foreign corporation A and 40 percent of the one class of stock of foreign corporation B, not a controlled foreign corporation. Corporation A directly owns 30 percent of the one class of stock of controlled foreign corporation C, and B Corporation directly owns the remaining 70 percent of the stock of C Corporation. Corporation M may make a chain election with respect to corporations A and C, but in such case C Corporation can be included in the chain only to the extent of M Corporation's indirect 30-percent stock interest in such corporation by reason of its direct ownership of 100 percent of the stock of A Corporation. Corporation M may instead make a chain election with respect to corporations B and C, but in such case C Corporation can be included in the chain only to the extent of M Corporation's indirect 28-percent stock interest in such corporation by reason of its direct ownership of 40 percent of the stock of B Corporation. In the latter case, B Corporation must be included in the chain even though it is not a controlled foreign corporation. Corporation M may also make two chain elections, one with respect to corporations A and C, and the other with respect to corporations B and C, as described above.

Example (5). Domestic corporation M directly owns all the one class of stock of controlled foreign corporation A, which in turn directly owns all the one class of stock of controlled foreign corporation B and 40 percent of the one class of stock of foreign corporation C, not a controlled foreign corporation. Corporation M may make a chain election with respect to corporations A and B. Corporation C may not be included in the chain since M Corporation does not, by reason of its indirect ownership of stock in C Corporation, own stock in any controlled foreign corporation.

Example (6). Domestic corporation M directly owns a 60-percent partnership interest in foreign partnership D and by reason of such interest owns indirectly, within the meaning of section 958(a)(2), 60 percent of the one class of stock of controlled foreign corporation E (all of the stock of which is directly owned by D Partnership) and 60 percent of the one class of stock of controlled foreign corporation F (all the stock of which is also directly owned by D Partnership). By virtue of its direct interest in D Partnership, M Corporation may make a chain election with respect to E Corporation alone or with respect to F Corporation alone. Corporation M may also make two chain elections, one with respect to E Corporation, the other with respect to F Corporation.

(f) *Corporations to which a group election may apply*—(1) *Includible interests.* A corporate United States shareholder may make a group election for the taxable year with respect to a

group of foreign corporations which includes, except as provided in subparagraphs (2) and (3) of this paragraph, all of the following corporations:

(i) All controlled foreign corporations in which such shareholder owns stock either directly within the meaning of section 958(a)(1)(A) or indirectly within the meaning of section 958(a)(2), and

(ii) All foreign corporations (whether or not controlled foreign corporations) by reason of ownership of stock in which such shareholder indirectly owns within the meaning of section 958(a)(2) stock in a controlled foreign corporation described in subdivision (i) of this subparagraph.

Example (1). Domestic corporation M directly owns all the one class of stock of controlled foreign corporations A and B and is a United States shareholder with respect to no other foreign corporation. M Corporation may make a group election with respect to corporations A and B.

Example (2). Domestic corporation M directly owns all the one class of stock of controlled foreign corporations A and B, and B Corporation directly owns 80 percent of the one class of stock of controlled foreign corporation C. Corporation M is a United States shareholder only with respect to corporations A, B, and C. If M Corporation makes a group election, it must make the election with respect to corporations A, B, and C.

Example (3). Domestic corporation M directly owns all the one class of stock of controlled foreign corporations A and B. Corporation A directly owns 70 percent of the one class of stock of controlled foreign corporation C. Corporation B directly owns 40 percent of the one class of stock of foreign corporation D, not a controlled foreign corporation, and D Corporation directly owns 30 percent of the stock of C Corporation. Corporation M is a United States shareholder with respect to no other foreign corporation. If M Corporation makes a group election, it must make the election with respect to corporations A, B, C, and D. Corporation D must be included in the group even though it is not a controlled foreign corporation.

(2) *Less developed country corporations.* If the United States shareholder so elects, it may for any taxable year exclude from a group for purposes of a group election every controlled foreign corporation which is a less developed country corporation as defined in section 955(c) and § 1.955-5 for the taxable year of such foreign corporation ending with or within such taxable year of the shareholder but only if, by reason of ownership of stock in such foreign corporation, the shareholder does not indirectly own within the meaning of section 958(a)(2) stock in any other controlled foreign corporation which is not a less developed country corporation for its taxable year ending with or within such taxable year of the shareholder. The election under this subparagraph to exclude a less developed country corporation is required to be made with respect to all less developed country corporations of which the electing shareholder is a United States shareholder and which, under the preceding sentence, are eligible to be excluded.

Example. Domestic corporation M directly owns all the one class of stock of controlled foreign corporations A and B, not less developed country corporations. Corporation A directly owns all the one class of stock of

controlled foreign corporation C, B Corporation directly owns all the one class of stock of controlled foreign corporation D, and D Corporation directly owns all the one class of stock of controlled foreign corporation E. Corporations C, D, and E are less developed country corporations. Corporation M may make a group election with respect to corporations A, B, C, D, and E; it may also exclude the less developed country corporations and make a group election with respect to corporations A and B only. If E Corporation were not a less developed country corporation however, neither D Corporation nor E Corporation could be excluded since, by reason of stock in D Corporation, M Corporation would indirectly own stock in E Corporation, a controlled foreign corporation which is not a less developed country corporation.

(3) *Foreign corporations with blocked foreign income.* If the United States shareholder so elects, it may for any taxable year exclude from a group for purposes of a group election any foreign corporation with respect to which it is established to the satisfaction of the Commissioner that an amount of earnings and profits of such corporation sufficient to constitute its share of a pro rata minimum distribution (as defined in paragraph (c)(1) of § 1.963-6) by the group cannot be distributed to such United States shareholder because of currency or other restrictions or limitations imposed under the laws of any foreign country. If, by reason of ownership of stock in a foreign corporation which is excluded from the group under the preceding sentence, a United States shareholder owns stock in another foreign corporation an amount of whose earnings and profits sufficient to constitute its share of a pro rata minimum distribution by the group cannot be distributed to such United States shareholder through such excluded foreign corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country, such other foreign corporation must also be excluded from the group for purposes of the group election. For rules for determining when earnings and profits cannot be distributed because of currency or other restrictions or limitations imposed under the laws of a foreign country, see the regulations under section 964(b).

(4) *Treatment of foreign branches of domestic corporation as foreign corporations*—(i) *In general.* If the United States shareholder so elects, all branches (other than a branch excluded under subdivision (iii) of this subparagraph) maintained by such shareholder in foreign countries and possessions of the United States shall be treated, for purposes of applying subparagraph (1) of this paragraph, as wholly owned foreign subsidiary corporations of such shareholder organized under the laws of such respective foreign countries or possessions of the United States. Each branch treated as such a foreign subsidiary corporation shall be included in the group by the United States shareholder making the group election and shall be regarded, for purposes of section 963, as having distributed to such shareholder its earnings and profits for the taxable year. For the treatment of a deficit in the earnings and profits of such a branch

see paragraph (b) (2) (ii) of § 1.963-3. As used in this subparagraph, the term "branch" shall mean a permanent organization maintained in a foreign country or possession of the United States to engage in the active conduct of a trade or business therein. Whether a permanent organization is maintained in a foreign country or possession of the United States shall depend upon the facts and circumstances of the particular case. As a general rule, a permanent organization shall be considered to be maintained in such country or possession if the United States shareholder is engaged therein in continuous operational activities which are substantial in nature as evidenced by the use within that country or possession of a substantial work force and substantial manufacturing, mining, warehousing, sales, office, or similar facilities of a fixed or permanent nature. If a United States shareholder so operates that it satisfies the branch test with respect to each of several foreign countries or possessions, each such branch shall be treated as a separate wholly owned foreign subsidiary organized under the laws of such country or possession in respect to which it satisfies such test. In no event shall a branch which is treated as a wholly owned foreign subsidiary under this subparagraph be also treated as a less developed country corporation. The term "possession of the United States," as used in this subparagraph, shall be construed to have the same meaning as that contained in paragraph (b) (2) of § 1.957-3.

(ii) *Earnings and profits and taxes of a branch.* The earnings and profits (or deficit in earnings and profits) of a branch treated as a wholly owned foreign subsidiary corporation under this subparagraph for a taxable year shall be determined by applying against the gross income of the branch its allowable deductions (other than any net operating loss deduction). Any excess of gross income over such deductions shall constitute earnings and profits. Any excess of such deductions over gross income shall constitute a deficit in earnings and profits. For purposes of this subdivision and subdivision (iii) of this subparagraph, the gross income of a branch is that which is produced by the trade or business activities separately conducted by it outside the United States and which is derived from sources without the United States under the provisions of sections 861 through 864 and the regulations thereunder; the allowable deductions of a branch are those which are properly allocable to or chargeable against its gross income and which are allowable under chapter 1 of the Code to the corporation of which it is a branch. Only the foreign income tax allocable to the gross income of the branch shall be considered paid or accrued by such branch. Solely for the purpose of determining the effective foreign tax rate of a group which includes a branch treated as a wholly owned foreign subsidiary corporation, the foreign income tax considered paid or accrued by the branch shall be treated as an allowable deduction of such branch irrespective of the application of section 164 and the regulations thereunder.

(iii) *Excluded branches.* For purposes of subdivision (i) of this subparagraph, a branch shall not be treated as a wholly owned foreign subsidiary corporation of the United States shareholder for the taxable year—

(a) *Branch in a United States possession.* In the case of a branch maintained by such shareholder in a possession of the United States, unless such branch would be a controlled foreign corporation (as defined in section 957 and the regulations thereunder) for such taxable year if it were incorporated under the laws of such possession and unless the gross income of such shareholder for such taxable year includes for purposes of the tax imposed by chapter 1 of the Code income derived by such shareholder from sources within possessions of the United States, as determined under the provisions of sections 861 through 864, and the regulations thereunder; or

(b) *Loss branches.* In the case of a branch whose allowable deductions (other than any net operating loss deduction) exceed its gross income for such taxable year, unless such shareholder elects not to take such excess of deductions into account in computing its taxable income (without regard to section 963) for such year. The election not to take such excess into account in so computing taxable income for the taxable year shall be made by filing a statement with the shareholder's return for such year that the shareholder has computed the minimum distribution from the group for such year by taking such excess of deductions into account and that the shareholder waives the right to take such excess into account in computing its taxable income (without regard to section 963) for such year. Once an election is made by filing such statement, it shall be irrevocable for the taxable year.

(iv) *Illustrations.* The application of this subparagraph may be illustrated by the following examples:

Example (1). Throughout 1964, domestic corporation M directly owns all of the one class of stock of controlled foreign corporations A and B. All corporations use the calendar year as the taxable year. During 1964, M Corporation engages in foreign country X in the manufacture and sale of steel tubing and rods, maintaining therein a substantial work force and substantial manufacturing and sales facilities for such purpose. Corporation M also engages in foreign country Y in the mining and sale of iron ore, maintaining therein a substantial work force and substantial mining and sales facilities for such purpose. For 1964, M Corporation may make a group election with respect to corporations A and B and the branches operated in country X and country Y, treating such branches as wholly owned foreign subsidiary corporations. If corporation M elects to include one such branch in the group election, it must include both.

Example (2). Throughout 1964, domestic corporation M directly owns all the one class of stock of controlled foreign corporations A and B. It also exports tractors to foreign country Z, in which country its sole activities consist of arranging for title to the tractors to pass to the purchasers in that country. Corporation M's only facility in country Z is a small rented office, and its work force therein consists only of several clerical employees. The activities of M Corporation in country Z do not constitute the

maintenance of a branch therein for purposes of this subparagraph. Corporation M may make a group election only with respect to corporations A and B.

§ 1.963-2 Minimum distributions.

(a) *In general.* The minimum distribution required to be received by a United States shareholder with respect to stock to which an election under paragraph (c) of § 1.963-1 applies for the taxable year in order to qualify for a section 963 exclusion for such year is a distribution with respect to such stock by which such shareholder receives its proportionate share of a minimum percentage of—

(1) In the case of a first-tier election, the earnings and profits for the taxable year of the single first-tier corporation to which the election relates,

(2) In the case of a chain election, the consolidated earnings and profits for the taxable year of the chain to which the election relates, or

(3) In the case of a group election, the consolidated earnings and profits for the taxable year of the group to which the election relates.

(b) *Minimum percentage.* The minimum percentage (referred to in paragraph (a) of this section) is inversely proportional, as provided in the following table, to the taxable year's effective foreign tax rate (as defined in § 1.963-4) applicable to the single first-tier corporation, chain, or group.

The required minimum distribution of earnings and profits is (percentage) —	
If the effective foreign tax rate is (percentage) —	
Under 10.....	90
10 or over but less than 20.....	86
20 or over but less than 28.....	82
28 or over but less than 34.....	75
34 or over but less than 39.....	68
39 or over but less than 42.....	55
42 or over but less than 44.....	40
44 or over but less than 46.....	27
46 or over but less than 47.....	14
47 or over.....	0

(c) *Proportionate share of percentage of earnings and profits—*(1) *General rule.* For purposes of paragraph (a) of this section, the proportionate share of the minimum percentage of the taxable year's earnings and profits of a foreign corporation is the product resulting from the multiplication of the minimum percentage specified in paragraph (b) of this section by the United States shareholder's proportionate share of the earnings and profits of such corporation, as determined under paragraph (b) (2) (i) of § 1.963-3. The proportionate share of the minimum percentage of the taxable year's consolidated earnings and profits of a chain or group for such purposes is the product resulting from the multiplication of the minimum percentage specified in paragraph (b) of this section by the consolidated earnings and profits of such chain or group, as determined under paragraph (b) (1) of § 1.963-3. However, see subparagraph (2) of this paragraph.

(2) *Rule for corporation with variation in tax rate because of distributions—*(i) *Single corporation or corporation in a chain or group making a pro rata minimum distribution.* If the rate of foreign income tax paid or accrued for any taxable year by a foreign corporation on

income which is distributed differs from the rate of foreign income tax on its income which is not distributed, the proportionate share of the minimum percentage of the taxable year's earnings and profits of such corporation shall be—

(a) The amount resulting from the multiplication of the minimum percentage specified in paragraph (b) of this section by the United States shareholder's proportionate share of the pretax earnings and profits of such corporation determined under paragraph (b) (2) (i) of § 1.963-3 but computed without the deduction for foreign income tax provided by paragraph (a) (2) (ii) of such section, reduced by

(b) The foreign income tax on the pretax amount determined under (a) of this subdivision if such amount, less such tax, is distributed for such taxable year.

(ii) *Corporation in a chain or group making a non pro rata minimum distribution.* If a chain or group contains one or more foreign corporations described in subdivision (i) of this subparagraph and such chain or group makes a non pro rata minimum distribution (as defined in paragraph (c) (2) of § 1.963-6) for the taxable year, the proportionate share of the minimum percentage of the taxable year's consolidated earnings and profits of such chain or group shall be—

(a) The amount resulting from the multiplication of the minimum percentage specified in paragraph (b) of this section by the pretax consolidated earnings and profits of such chain or group determined under paragraph (b) (1) of § 1.963-3 but computed without the deduction for foreign income tax provided by paragraph (a) (2) (ii) of such section, reduced by

(b) The foreign income tax on the pretax amount determined under (a) of this subdivision if such amount, less such tax, is distributed for such taxable year.

(3) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). Domestic corporation M directly owns 80 percent of the one class of stock of controlled foreign corporation A. Both corporations use the calendar year as the taxable year. In 1964, A Corporation has pretax earnings and profits of \$100 on which foreign income tax is imposed at a flat rate of 40 percent. The effective foreign tax rate applicable to A Corporation, as determined under § 1.963-4, is 40 percent, and the minimum percentage under paragraph (b) of this section is 55 percent. Corporation M's proportionate share of the minimum percentage of the earnings and profits of A Corporation for 1964 is \$26.40 (80 percent of 55 percent of \$60).

Example (2). The facts are the same as in example (1) except that M Corporation also directly owns 80 percent of the one class of stock of controlled foreign corporation B, which uses the calendar year as its taxable year and has \$100 pretax earnings and profits upon which a foreign income tax is imposed at a flat rate of 40 percent. Corporation M makes a group election, and its proportionate share of the minimum percentage of the consolidated earnings and profits of the group for 1964 is \$52.80 (80 percent of 55 percent of \$120, the consolidated earnings and profits of the group).

Example (3). Domestic corporation M directly owns 80 percent of the one class of stock of single first-tier corporation B which

for 1964 has \$100 of pretax earnings and profits on which is imposed a foreign income tax of 40 percent of pretax earnings and profits minus dividends for the taxable year and of 20 percent of the amount of such dividends. Both corporations use the calendar year as the taxable year. The effective foreign tax rate applicable to B Corporation, as determined under § 1.963-4, is 40 percent, and the minimum percentage under paragraph (b) of this section is 55 percent. Corporation M's proportionate share of the minimum percentage of B Corporation's earnings and profits for 1964 is \$33, that is, 80 percent of \$41.25, the distribution which would be made if there were distributed that amount of earnings and profits which, together with the foreign income tax at the rate effectively applicable to pretax earnings and profits to which such distribution is attributable, equals 55 percent of \$100. Such distribution may be determined by solving for "d" in the following formula:

$$\begin{aligned} d &= \$55 - 0.20d - 0.40(\$55 - d) \\ d &= \$55 - 0.20d - \$22 + 0.40d \\ d &= \$33 + 0.20d \\ 0.80d &= \$33 \\ d &= \$33 / 0.80 \\ d &= \$41.25 \end{aligned}$$

Example (4). Domestic corporation M directly owns 80 percent of the one class of stock of each of controlled foreign corporations A and B, which constitute a group and each of which for 1964 has pretax earnings and profits of \$100. All corporations use the calendar year as the taxable year. Corporation A is subject to foreign income tax as a flat rate of 40 percent; and B Corporation is subject to a foreign income tax of 40 percent of \$100 minus dividends for the taxable year and of 20 percent of the amount of such dividends. The effective foreign tax rate with respect to the group, as determined under § 1.953-4, is 40 percent, and the minimum percentage under paragraph (b) of this section is 55 percent. Corporation B distributes \$25 for 1964 toward a non pro rata minimum distribution from the group. Corporation M's proportionate share of the minimum percentage of the consolidated earnings and profits of the group for 1964 is computed as follows:

M Corporation's proportionate share of B Corporation's distribution ($0.80 \times \$25$)	\$20.00
Pretax consolidated earnings and profits of the group ($0.80 \times \$200$)	160.00
Minimum percentage of pretax consolidated earnings and profits ($0.55 \times \$160$)	88.00
Less: Portion of such minimum percentage to which the \$20 dividend received from B Corporation is attributable:	
Total dividend paid by B Corporation	\$25.00
Plus: Foreign income tax on B Corporation's pretax earnings and profits to which such dividend is attributable, letting "t" represent such tax:	
$t = 0.20(\$25) + 0.40t$	
$t = \$5 + 0.40t$	
$0.60t = \$5$	
$t = \$5 / 0.60$	8.33

B Corporation's pretax earnings and profits to which such dividend is attributable 33.33

M Corporation's proportionate share of B Corporation's pretax earnings and profits to which dividend is attributable
($0.80 \times \$33.33$)

26.67

Portion of M Corporation's proportionate share of the minimum percentage of the pretax consolidated earnings and profits of the group to which A Corporation's distribution must be attributable \$62.33

Dividend required to be received from A Corporation ($\$61.33 - [0.40 \times \$61.33]$) 36.80

M Corporation's proportionate share of the minimum percentage of the taxable year's consolidated earnings and profits of the group
($\$20 + \$36.80$) 56.80

Example (5). The facts are the same as in example (4) except that the \$25 distribution of earnings and profits is made by A Corporation. Corporation M's proportionate share of the minimum percentage of the consolidated earnings and profits of the group for 1964 is computed as follows:

M Corporation's proportionate share of A Corporation's distribution
($0.80 \times \$25$) \$20.00

Pretax consolidated earnings and profits of the group ($0.80 \times \$200$) 160.00

Minimum percentage of pretax consolidated earnings and profits
($0.55 \times \$160$) 88.00

Less: Portion of such minimum percentage to which the \$20 dividend received from A Corporation is attributable:

Total dividend paid by A Corporation \$25.00

Plus: Foreign income tax on A Corporation's pretax earnings and profits to which such dividend is attributable ($0.40 \times [\$25 / 0.60]$) 16.67

A Corporation's pretax earnings and profits to which such dividend is attributable 41.67

M Corporation's proportionate share of A Corporation's pretax earnings and profits to which dividend is attributable
($\$41.67 \times 0.80$) 33.33

Portion of M Corporation's proportionate share of the minimum percentage of the pretax consolidated earnings and profits of the group to which B Corporation's distribution must be attributable 54.67

Dividend received from B Corporation, letting "d" represent the dividend:

$$d = \$54.67 - 0.20d - 0.40(\$54.67 - d)$$

$$d = \$54.67 - 0.20d - \$21.87 + 0.40d$$

$$d = \$32.80 + 0.20d$$

$$0.80d = \$32.80$$

$$d = \$32.80 / 0.80 41.00$$

M Corporation's proportionate share of the minimum percentage of the taxable year's consolidated earnings and profits of the group
($\$20 + \$41$) 61.00

(d) *Cross reference.* For rules governing the alternative use of a pro rata minimum distribution or a non pro rata minimum distribution to satisfy the min-

imum distribution requirement of paragraph (a) of this section in the case of a chain or group, see § 1.963-6.

§ 1.963-3 Computation of earnings and profits and foreign income tax.

(a) *In general.* For the application of §§ 1.963-1 to 1.963-9, inclusive, the earnings and profits and foreign income tax of a foreign corporation (or a branch treated under paragraph (f)(4) of § 1.963-1 as a wholly owned foreign subsidiary corporation) for a taxable year for which an election to receive a minimum distribution applies shall be computed with respect to the electing United States shareholder as provided in the successive steps set forth in subparagraphs (1) and (2) of this paragraph:

(1) *Pretax and predistribution earnings and profits.*—(i) *In general.* Compute pretax and predistribution earnings and profits of the foreign corporation for the taxable year by determining its earnings and profits under section 964(a) and the regulations thereunder for such year before reduction for distributions paid from such earnings and profits and without reduction for foreign income tax.

(ii) *Elimination of intercorporate distributions.* In the case of a chain or group, compute the amount of pretax and predistribution earnings and profits (or deficit in earnings and profits) of the foreign corporation by reducing the amount determined, under subdivision (i) of this subparagraph by distributions of earnings and profits received for the taxable year, from any other foreign corporation in such chain or group to which the election by the United States shareholder applies. The amount of distributions to be so deducted shall be computed without reduction for foreign income tax paid or accrued for such year by such corporation on such distributions from such other corporation.

(2) *Earnings and profits and foreign income tax.*—(i) *Foreign income tax.* Compute the foreign income tax of the foreign corporation on the pretax and predistribution earnings and profits determined under subparagraph (1) of this paragraph. For example, if the pretax and predistribution earnings and profits of a foreign corporation are \$100 for the taxable year and foreign income tax is imposed at a flat rate of 30 percent, the foreign income tax is \$30. If under the laws of a foreign country or possession of the United States the foreign income tax of a foreign corporation for the taxable year depends upon the extent to which distributions are made by such corporation from its earnings and profits for such year, the foreign income tax on the pretax and predistribution earnings and profits shall (solely for the purpose of determining the effective foreign tax rate under § 1.963-4) be determined as if such corporation made no distributions for the taxable year. However, where the foreign income tax of a foreign corporation for the taxable year decreases as distributions are made from its earnings and profits, the rule in the preceding sentence shall not apply if the electing United States shareholder does not actually receive for the taxable year its proportionate share of the earnings

and profits which are actually distributed. In such case, the foreign income tax on pretax and predistribution earnings and profits shall be the actual foreign income tax of such corporation, computed on the basis of the distributions which are made. For example, assume that a second-tier foreign corporation in a chain has pretax and predistribution earnings and profits of \$100 for the taxable year and that foreign law imposes on such corporation a foreign income tax of 50 percent of the pretax earnings and profits minus dividends for such year and of 20 percent of such dividends. If the second-tier foreign corporation distributes \$20 of earnings and profits to a first-tier foreign corporation which is part of the same chain, and if the first-tier foreign corporation retains the dividend so received, the foreign income tax of the second-tier foreign corporation shall be considered to be the tax actually paid for the taxable year, that is, \$44.00 (50 percent of \$80 plus 20 percent of \$20). If the first-tier foreign corporation distributes the dividend so received, the foreign income tax of the second-tier foreign corporation shall be considered to be \$50 (50 percent of \$100). For rules for determining whether amounts distributed by one foreign corporation to another are received by a United States shareholder, see paragraph (c)(1) of § 1.963-5.

(ii) *Earnings and profits.* Compute the earnings and profits of the foreign corporation for the taxable year by deducting from the pretax and predistribution earnings and profits of such corporation determined under subparagraph (1) of this paragraph the foreign income tax determined under subdivision (i) of this subparagraph. Thus, if pretax and predistribution earnings and profits of such a corporation are \$100 and the foreign income tax as so determined is \$40, the earnings and profits for the taxable year are \$60 (\$100 less \$40).

(b) Consolidated earnings and profits and consolidated foreign income taxes.

(1) *In general.* The consolidated earnings and profits of a chain or group for the taxable year with respect to any United States shareholder electing to receive a minimum distribution from such chain or group shall be the sum of such shareholder's proportionate share of the earnings and profits (or of the deficit in earnings and profits) determined under subparagraph (2) of this paragraph, if any, for such year of each foreign corporation, whether or not a controlled foreign corporation, in such chain or group. The consolidated foreign income taxes of such chain or group with respect to such shareholder for such year shall be the sum of such shareholder's proportionate shares of the foreign income tax, determined under subparagraph (2) of this paragraph, of each such corporation. As used in this subparagraph, the term "corporation" includes a branch treated as a wholly owned foreign subsidiary corporation and included in a group under paragraph (f)(4) of § 1.963-1.

(2) Proportionate share of earnings and profits or of foreign income tax.—(i) *Corporation with earnings and profits.*

(a) A United States shareholder's pro-

portionate share, with respect to stock to which the election to receive a minimum distribution relates, of the earnings and profits of a foreign corporation for its taxable year shall be the share which such shareholder would receive if the total amount of such corporation's earnings and profits, as determined under paragraph (a)(2)(ii) of this section, for such year were distributed on the last day of such corporation's taxable year on which such corporation is a controlled foreign corporation or is a foreign corporation by reason of the ownership of stock in which the United States shareholder indirectly owns (within the meaning of section 958(a)(2)) stock in a controlled foreign corporation. Such shareholder's proportionate share, with respect to such stock, of foreign income tax of such corporation for such year shall be the amount which bears to the total of such corporation's foreign income tax for such year, as determined under paragraph (a)(2)(i) of this section, the same ratio which such shareholder's proportionate share, with respect to such stock, of the earnings and profits of such corporation for such year bears to the total earnings and profits of such corporation for such year, as determined under paragraph (a)(2)(ii) of this section.

(b) A United States shareholder's proportionate share of earnings and profits of a branch treated as a wholly owned foreign subsidiary corporation and included in a group under paragraph (f)(4) of § 1.963-1 shall be the total earnings and profits of such branch for the taxable year, and the proportionate share of foreign income tax of such branch shall be the total foreign income tax for the taxable year on the pretax earnings and profits of such branch.

(c) If the proportionate share to be determined is of earnings and profits of a foreign corporation the stock of which is owned by the United States shareholder by reason of its ownership of stock (with respect to which the election relates) in another corporation, such shareholder's proportionate share of such earnings and profits for the taxable year shall be determined on the basis of the amount such shareholder would receive from such foreign corporation with respect to stock in such foreign corporation if there were distributed for the taxable year all such earnings and profits and of all the earnings and profits of all other corporations through which such earnings and profits must pass in order to be received by such shareholder with respect to the stock to which the election relates. For purposes of the preceding sentence, the amount received by the shareholder from the earnings and profits of a foreign corporation shall be determined without taking into account deductions (whether or not allowable under chapter 1 of the Code) of other foreign corporations through which such earnings and profits are distributed.

(d) If a foreign corporation for a taxable year has more than one class of stock outstanding, the earnings and profits of such corporation which shall be taken into account with respect to any

one class of such stock shall be the earnings and profits which would be distributed with respect to such class if all earnings and profits of such corporation for such year were distributed on the last day of such foreign corporation's taxable year, on which such corporation is a controlled foreign corporation or is a foreign corporation by reason of the ownership of stock in which the United States shareholder indirectly owns (within the meaning of section 958(a)(2)) stock in a controlled foreign corporation. For such purpose no part of the earnings and profits for the taxable year shall be treated as payable with respect to stock as a dividend in arrears.

(e) If the allocation of a foreign corporation's earnings and profits for the taxable year between two or more classes of stock depends upon the exercise of discretion by that body of persons which exercises with respect to such corporation the powers ordinarily exercised by the board of directors of a domestic corporation, the allocation of earnings and profits to such classes shall be made for purposes of this subdivision as if such classes constituted one class of stock in which each share has the same rights to dividends as any other share, unless a different method of allocation of earnings and profits is established as proper by the United States shareholder.

(f) The application of this subdivision may be illustrated by the following examples:

Example (1). Domestic corporation M directly owns 80 percent of the one class of stock of controlled foreign corporation A which directly owns 60 percent of the one class of stock of controlled foreign corporation B. Each such corporation has earnings and profits of \$70 and foreign income tax of \$30 for the taxable year. Corporation M's proportionate share of the earnings and profits is \$56 ($0.80 \times \$70$) as to A Corporation and \$33.60 ($0.80 \times 0.60 \times \$70$) as to B Corporation. Corporation M's proportionate share of foreign income tax is \$24 ($\$56/\$70 \times \$30$) as to A Corporation and \$14.40 ($\$33.60/\$70 \times \$30$) as to B Corporation.

Example (2). Throughout its taxable year, controlled foreign corporation A has outstanding 40 shares of common stock and 60 shares of 6-percent, nonparticipating cumulative preferred stock with a par value of \$100 per share. Corporation A for such taxable year has earnings and profits of \$1,000. In such case, \$360 ($0.06 \times \$100 \times 60$) of earnings and profits are taken into account with respect to the preferred stock and \$640 ($\$1,000 - \$360$), with respect to the common stock; even though during such year A Corporation were to distribute with respect to the preferred stock \$720, consisting of the \$360 preferred dividend for the taxable year and of the \$360 cumulative preferred dividend for the preceding taxable year. Thus, if a United States shareholder owns 10 shares of common stock and 30 shares of preferred stock for the taxable year, its proportionate share of the earnings and profits is \$340 ($[(10/40 \times \$640) + (30/60 \times \$360)]$). If A Corporation's foreign income tax is \$200 for the taxable year, such shareholder's proportionate share of foreign income tax for such year is \$68 ($\$340/\$1,000 \times \$200$).

(ii) **Corporation with deficit in earnings and profits.** A United States shareholder's proportionate share, with respect to stock to which the election to receive a minimum distribution relates, of a deficit in earnings and profits of

a foreign corporation in a chain or group for a taxable year shall be the portion of such deficit which, if such corporation had earnings and profits for such year as determined under paragraph (a)(2)(ii) of this section and all of such earnings and profits were distributed on the date described in subdivision (i)(a) of this subparagraph, the share of such earnings and profits such shareholder would receive bears to the total of the earnings and profits which would be so distributed on such date. The total of such shareholder's proportionate shares, as so determined, of the deficit of every foreign corporation in the chain or group having a deficit for the taxable year shall be allocated against and shall reduce such shareholder's proportionate share of the earnings and profits for the taxable year of each other foreign corporation in the chain or group having earnings and profits for such year in an amount which bears to such total of shares of deficit the same ratio which such share of earnings and profits bears to the total of such shareholder's proportionate shares of the earnings and profits of all foreign corporations in the chain or group having earnings and profits for the taxable year. As used in this subdivision, the term "corporation" includes a branch treated as a wholly owned foreign subsidiary corporation and included in a group under paragraph (f)(4) of § 1.963-1.

(iii) **Controlled foreign corporation for part of year.** If—

(a) Stock in a foreign corporation is owned within the meaning of section 958(a) by a United States shareholder on the last day in the taxable year of such corporation for which such corporation is a controlled foreign corporation to which applies an election by such shareholder to receive a minimum distribution with respect to such stock, or

(b) Stock in a foreign corporation which is not a controlled foreign corporation is owned within the meaning of section 958(a) by a United States shareholder on the last day in the taxable year of such corporation on which another foreign corporation (which by reason of the stock so owned is owned by such shareholder within the meaning of section 958(a)) is a controlled foreign corporation to which applies an election by such shareholder to receive a minimum distribution with respect to such stock,

the earnings and profits of such foreign corporation for the taxable year which are taken into account in determining such shareholder's proportionate share thereof shall be an amount of such earnings and profits which bears to the total of such earnings and profits the same ratio which the part (computed on a daily basis) of such year during which such corporation is a controlled foreign corporation (or, in case such corporation is not a controlled foreign corporation, during which such other corporation is a controlled foreign corporation) bears to the total taxable year. The foreign income tax of such corporation which shall be taken into account in determining such shareholder's proportionate share thereof shall be an amount which

bears to the total of such corporation's foreign income tax for such year the same ratio which such shareholder's proportionate share of the earnings and profits of such corporation for such year bears to the total earnings and profits of such corporation for such year.

Example (1). Domestic corporation M on July 1, 1963, purchases 60 percent of the one class of stock of A Corporation which on such date becomes a controlled foreign corporation and remains such throughout the remainder of 1963. Both corporations use the calendar year as the taxable year. Corporation M makes a first-tier election with respect to A Corporation. For 1963, A Corporation has \$100 of earnings and profits and pays \$20 of foreign income tax. Corporation M's proportionate share of such earnings and profits for 1963 is \$30.25 ($0.60 \times [\$100/\$100]$). Corporation M's proportionate share of A Corporation's foreign income tax for 1963 is \$6.05 ($\$30.25/\$100 \times \$20$).

Example (2). (i) Throughout 1963 domestic corporation M directly owns 20 percent of the one class of stock of foreign corporation A, not a controlled foreign corporation at any time, which directly owns 50 percent of the one class of stock of foreign corporation B, which becomes a controlled foreign corporation on July 1, 1963, and remains such throughout the remainder of 1963. All such corporations use the calendar year as the taxable year. Each of corporations A and B has earnings and profits for 1963 of \$100 and pays foreign income tax of \$20. Corporation M makes a chain election for 1963 with respect to corporations A and B. Corporation M's proportionate share of the earnings and profits of A Corporation for 1963 is \$10.08 ($0.20 \times [\$100/\$100]$); its proportionate share of A Corporation's foreign income tax for 1963 is \$2.02 ($\$10.08/\$100 \times \$20$). Corporation M's proportionate share of the earnings and profits of B Corporation for 1963 is \$5.04 ($[0.20 \times 0.50] \times [\$100/\$100]$); its proportionate share of B Corporation's foreign income tax for 1963 is \$1.01 ($\$5.04/\$100 \times \$20$).

(ii) If B Corporation had been a controlled foreign corporation throughout 1963, M Corporation's proportionate share of the earnings and profits of corporations A and B for 1963 would have been \$20 ($0.20 \times \$100$) and \$10 ($0.20 \times 0.50 \times \$100$), respectively; and its proportionate share of the foreign income tax of such corporations for such year would have been \$4 ($\$20/\$100 \times \$20$) and \$2 ($\$10/\$100 \times \$20$), respectively.

(iii) If corporations A and B had each been a controlled foreign corporation only for the period of January 1, 1963, through June 30, 1963, M Corporation's proportionate share of the earnings and profits of such corporations would have been \$9.92 ($0.20 \times [\$100/\$100]$) and \$4.96 ($[0.20 \times 0.50] \times [\$100/\$100]$), respectively; and its proportionate share of the foreign income tax of such corporations would have been \$1.98 ($\$9.92/\$100 \times \$20$) and \$0.99 ($\$4.96/\$100 \times \$20$), respectively.

(iv) If A Corporation had been a controlled foreign corporation throughout 1963 or during the period of July 1, 1963, through December 31, 1963, but B Corporation had been a controlled foreign corporation only during the period of January 1, 1963, through June 30, 1963, M Corporation's proportionate share of the earnings and profits of such corporations would have been \$20 ($0.20 \times \$100$) and \$4.96 ($[0.20 \times 0.50] \times [\$100/\$100]$), respectively; and its proportionate share of the foreign income tax of such corporations for such year would have been \$4 ($\$20/\$100 \times \$20$) and \$0.99 ($\$4.96/\$100 \times \$20$), respectively.

(c) **Illustrations.** The application of this section may be illustrated by the following examples:

Example (1). For 1963 domestic corporation M makes a chain election with respect to controlled foreign corporation A, all of whose one class of stock it directly owns, and controlled foreign corporation B, all of whose one class of stock is directly owned by A Corporation. Both foreign corporations are subject to a foreign income tax at a flat rate of 30 percent, and all corporations use the calendar year as a taxable year. For 1963, B Corporation has pretax earnings and profits of \$100 and distributes \$51.50. For 1963, A Corporation has pretax earnings and profits of \$151.50, consisting of \$100 from selling activities and \$51.50 received as a distribution from B Corporation, upon which it pays a foreign income tax of \$45.45 (i.e., 30 percent of \$151.50). Corporation A distributes \$87.55 to M Corporation. To determine consolidated earnings and profits of the chain, the intercorporate dividend of \$51.50 from B Corporation to A Corporation and the foreign income tax imposed on A Corporation on such dividend is eliminated, so that A Corporation has pretax earnings and profits of \$100 (\$151.50 less \$51.50), foreign income tax of \$30 (30 percent of \$100), and earnings and profits of \$70 (\$100 less \$30). Corporation B has earnings and profits of \$70 (\$100 less foreign income tax of \$30). The consolidated earnings and

profits of the chain are \$140 (\$70 plus \$70) and the consolidated foreign income taxes are \$60 (\$30 plus \$30).

Example (2). For 1963 domestic corporation M makes a chain election with respect to the following controlled foreign corporations: A Corporation, 80 percent of whose one class of stock M Corporation owns directly; B Corporation, 60 percent of whose one class of stock is directly owned by A Corporation; and C Corporation, 70 percent of whose one class of stock is directly owned by B Corporation. All corporations use the calendar year as the taxable year; none of the foreign corporations is a less developed country corporation. The predistribution and pretax earnings and profits of each foreign corporation are \$100. Each foreign corporation pays a flat rate of foreign income tax on all income computed without reduction for dividends paid and determined by including dividends received. Such rate is 15 percent for A Corporation, 25 percent for B Corporation, and 35 percent for C Corporation. Each such corporation makes distributions during 1963. The consolidated earnings and profits and the consolidated foreign income taxes of the chain for 1963 with respect to M Corporation are computed as follows:

	Controlled foreign corporations		
	A	B	C
Predistribution and pretax earnings and profits.....	\$100	\$100	\$100.00
Foreign income tax.....	15	25	35.00
Predistribution earnings and profits.....	85	75	65.00
M Corporation's proportionate share of earnings and profits:			
($0.80 \times \$85$)	68		
($0.80 \times 0.60 \times \$75$)		36	
($0.80 \times 0.60 \times 0.70 \times \$65$)			21.84
Consolidated earnings and profits with respect to M Corporation (\$68 + \$36 + \$21.84)			125.84
M Corporation's proportionate share of foreign income tax:			
($\$15 \times [\$68/\$85]$)	12		
($\$25 \times [\$36/\$75]$)		12	
($\$35 \times [\$21.84/\$65]$)			11.76
Consolidated foreign income taxes with respect to M Corporation (\$12 + \$12 + \$11.76)			\$35.76

Example (3). For 1963 domestic corporation M directly owns the following percentages of the one class of stock of the following controlled foreign corporations in respect of which it makes a group election: 80 percent of A Corporation, 60 percent of B Corporation, and 70 percent of C Corporation. All corporations use the calendar year as the taxable year; none of the foreign corporations is a less developed country corporation. Each foreign corporation makes distributions during 1963. The consolidated earnings and profits and the consolidated foreign income taxes of the group for 1963 with respect to M Corporation are computed as follows, based on the income and foreign income tax shown in the following table:

	Controlled foreign corporations		
	A	B	C
Predistribution and pretax earnings and profits.....	\$100	\$100	\$100.00
Foreign income tax.....	15	25	35.00
Predistribution earnings and profits.....	85	75	65.00
M Corporation's proportionate share of earnings and profits:			
($0.80 \times \$85$)	68		
($0.60 \times \$75$)		45	
($0.70 \times \$65$)			45.50
Consolidated earnings and profits with respect to M Corporation (\$68 + \$45 + \$45.50)			158.50
M Corporation's proportionate share of foreign income tax:			
($\$15 \times [\$68/\$85]$)	12		
($\$25 \times [\$45/\$75]$)		15	
($\$35 \times [\$45.50/\$65]$)			24.50
Consolidated foreign income taxes with respect to M Corporation (\$12 + \$15 + \$24.50)			51.50

§ 1.963-4 Effective foreign tax rate.

(a) **Definition.** For purposes of §§ 1.963-1 to 1.963-9, inclusive, the term "effective foreign tax rate" for a taxable year means—

(1) **Single first-tier corporation.** With respect to a single first-tier corporation the percentage which—

(i) The foreign income tax of such corporation for the taxable year is of—

(ii) The sum of—

(a) The earnings and profits of such corporation for the taxable year, and

(b) The tax described in subdivision (i) of this subparagraph.

(2) **Chain or group of corporations.** With respect to a chain or group the percentage which—

(i) The consolidated foreign income taxes of such chain or group for the taxable year are of—

(ii) The sum of—

(a) The consolidated earnings and profits of such chain or group for the taxable year, and

(b) The taxes described in subdivision (i) of this subparagraph.

(3) **Treatment of United States tax as foreign tax.** For the purpose solely of determining the effective foreign tax rate under this paragraph, if a foreign corporation has pretax earnings and profits attributable to income from sources within the United States for the taxable year upon which it pays United States income tax and if distributions from the earnings and profits of such corporation for such year to the electing United States shareholder with respect to stock to which the election to receive a minimum distribution relates do not entitle such shareholder to the dividends-received deduction under section 245, the amount of the United States income tax shall be taken into account as though such tax were foreign income tax. The amount so treated as foreign income tax shall not exceed 91 percent of an amount determined by multiplying such pretax earnings and profits attributable to income from sources within the United States by a percentage which is the sum of the normal tax rate and the surtax rate (determined without regard to the surtax exemption) for the taxable year prescribed by section 11 of the Code.

(b) **Illustrations.** The application of this section may be illustrated by the following examples:

Example (1). Single first-tier corporation A has earnings and profits for the taxable year of \$70 after paying foreign income tax of \$30. The effective foreign tax rate for the taxable year is 30 percent, determined by dividing \$30 by the sum of \$70 plus \$30.

Example (2). The consolidated earnings and profits of a chain with respect to the electing United States shareholder are \$125.84, and the consolidated foreign income taxes are \$35.76, as determined in example (2) of paragraph (c) of § 1.963-3. The effective foreign tax rate with respect to such shareholder is 22.13 percent, determined by dividing \$35.76 by the sum of \$125.84 plus \$35.76.

Example (3). Single first-tier corporation A has pretax earnings and profits for the taxable year of \$100 of which \$40 is attributable to income from sources within the United States and on which \$12 United States income tax is paid. The foreign country in which A Corporation is incorporated imposes an income tax at 30 percent of the \$100 but allows a credit for the \$12 of United States income tax, so that it imposes a net foreign income tax of \$18. In determining the effective foreign tax rate, such \$12 of United States income tax may be treated as foreign income tax to the extent it does not exceed \$18.93 ($\$40 \times 0.91 \times [0.30 + 0.22]$). Corporation A has earnings and profits of \$70. The effective foreign tax rate for the taxable year is 30 percent, determined by dividing \$30 by the sum of \$70 plus \$30. Such United States tax, however, shall not be treated as a foreign tax for purposes of the foreign tax credit under section 901.

§ 1.963-5 Distributions counting as minimum distributions.

(a) **Distributions from earnings and profits of current year only.** A distribution by a single first-tier corporation or by a foreign corporation in a chain or group shall count toward a minimum

distribution to a United States shareholder for a taxable year only to the extent it is made from such shareholder's proportionate share of the earnings and profits, as determined under paragraph (b) (2) of § 1.963-3 of such corporation for such taxable year. For the purpose of determining whether a distribution by the foreign corporation is made from such proportionate share of the earnings and profits of such taxable year:

(1) *Exception for distribution period.* Section 316 shall apply except that a distribution of earnings and profits made by the foreign corporation following the close of its taxable year but during its distribution period for such year shall be treated as having been paid from its earnings and profits for such taxable year to the same extent that the distribution would have been so treated if it had been made on the last day of such year. See paragraph (f) of this section for determination of the distribution period with respect to a foreign corporation.

(2) *Treated as having no subpart F income.* The foreign corporation shall be treated as having no subpart F income for the taxable year with respect to stock to which the election by the United States shareholder relates.

(3) *Application first to earnings invested in United States property.* A distribution from the earnings and profits for the taxable year of the foreign corporation shall first be attributed to earnings and profits attributable to amounts included in gross income of the United States shareholder under section 951(a) (1) (B), then to other earnings and profits for such year.

(4) *Cumulative dividends.* A cumulative dividend paid on preferred stock shall be treated as being made out of earnings and profits of the foreign corporation for the taxable year only to the extent the dividend is not attributable to the payment of dividends in arrears.

(5) *Non pro rata minimum distribution.* Solely for the application of this paragraph in the case of a non pro rata minimum distribution (as defined in paragraph (c) (2) of § 1.963-6), the United States shareholder's proportionate share of the earnings and profits of a foreign corporation in a chain or group shall be determined without the allocation thereto, under paragraph (b) (2) (ii) of § 1.963-3, of deficits in earnings and profits of other foreign corporations in such chain or group.

(b) *Dividends.* No distribution received by a United States shareholder shall count toward a minimum distribution for the taxable year with respect to such shareholder to the extent the distribution is excludable from gross income (except in the case of a distribution from earnings and profits for the taxable year attributable to amounts required to be included in gross income of such shareholder under section 951(a) (1) (B) for such year), to the extent gain on the distribution is not recognized, or to the extent the distribution is treated as a distribution in part or full payment in exchange for stock. Undistributed amounts required to be included in gross income under section 551 as undistrib-

uted foreign personal holding company income or under section 951 as undistributed amounts of a controlled foreign corporation shall not count toward a minimum distribution under section 963.

(c) *Rules for distributing through a chain of ownership contained in a chain or group.* In determining whether and to what extent a minimum distribution for any taxable year has been made out of the earnings and profits of a foreign corporation included in a chain of ownership described in section 958(a) consisting of two or more corporations in a chain or group for the taxable year, the following rules under this paragraph shall apply:

(1) *Allocation first to income received as a distribution.* (i) If any foreign corporation included in the chain or group for the taxable year receives a distribution for such year from another foreign corporation in the chain or group and in turn makes a distribution for the taxable year, the distribution so made shall be allocated, to the extent it does not exceed the earnings and profits attributable to such distribution received from such other foreign corporation in the chain or group, first to the amount so received from such other foreign corporation; if amounts are so received from more than one such other foreign corporation, the distribution by the recipient corporation shall be apportioned among all such amounts. If one or more of such other foreign corporations is a corporation whose foreign income tax rate decreases as the distributions are made, the allocation under the preceding sentence shall be made first to such corporations' distributions.

(ii) For purposes of subdivision (i) of this subparagraph a foreign corporation included in a chain or group shall be considered to make a distribution for the taxable year if the distribution is made during the distribution period with respect to such corporation for its taxable year to which applies the election by the United States shareholder to receive a minimum distribution. A distribution received by such foreign corporation during such period on stock by reason of which another foreign corporation from which such distribution is received is included in the chain or group shall be considered to be received by such foreign corporation for the taxable year if the other foreign corporation from which such distribution is received made such distribution during the distribution period with respect to such other foreign corporation for its taxable year to which applies the election made by such United States shareholder. See paragraph (f) of this section for determination of the distribution period with respect to a foreign corporation.

(2) *Successive distributions through a chain or group.* If any foreign corporation included in a chain or group for the taxable year distributes an amount from its earnings and profits for such year, the amount so distributed shall be considered to be received from such earnings and profits by the United States shareholder to the extent the amount is distributed by successive distributions made by each other foreign corporation

in the chain or group for the taxable year through the chain of ownership described in section 958(a) into the hands of such shareholder.

(3) *Computation without reduction by taxes of intervening corporation.* If, for the taxable year to which the election to receive a minimum distribution applies, the United States shareholder receives a distribution to which subparagraph (2) of this paragraph applies, the entire amount distributed by the foreign corporation from such shareholder's proportionate share of its earnings and profits for the taxable year shall count toward a minimum distribution and shall not be reduced for such purpose by any foreign income tax paid or accrued on such amount by another foreign corporation in the chain or group through which such amount is distributed by successive distributions into the hands of such shareholder.

Example. Domestic corporation M for 1963 makes a chain election with respect to controlled foreign corporation A, all the one class of stock of which is directly owned by M Corporation, and controlled foreign corporation B, all the one class of stock of which is directly owned by A Corporation. All corporations use the calendar year as the taxable year. Corporation A's only income for 1963 is a dividend of \$52.50 distributed from B Corporation on which A Corporation is subject to an income tax of \$10.50. The remaining \$42 (\$52.50 less \$10.50) is distributed by A Corporation for 1963 to M Corporation. The full \$52.50 distributed by B Corporation counts toward a minimum distribution by the chain.

(d) *Distributions prior or subsequent to transfer of stock.* A United States shareholder which owns (within the meaning of section 958(a)) stock in a foreign corporation to which applies an election to receive a minimum distribution for the taxable year may count toward the minimum distribution any distribution of the earnings and profits of such foreign corporation for such taxable year with respect to such stock to any other person (whether or not a United States person) to the extent that such distribution would have so qualified toward a minimum distribution if it had been received by such United States shareholder, but not in excess of an amount which bears to such United States shareholder's proportionate share of the earnings and profits of such foreign corporation for such year with respect to such stock the same ratio (computed on a daily basis) that the portion (during which such other person owned such stock) of the part of the taxable year of such foreign corporation which was taken into account under paragraph (b) (2) of § 1.963-3 in determining such United States shareholder's proportionate share of the earnings and profits of such corporation bears to such part of the taxable year which was taken into account under such paragraph in determining such proportionate share. The preceding sentence shall not apply to distributions with respect to stock of a foreign corporation by reason of which such corporation is included in a chain of ownership described in section 958(a) (2) with respect to the United States shareholder at any time

during the taxable year of such foreign corporation ending with or within the taxable year of such shareholder. The application of this paragraph may be illustrated by the following examples:

Example (1). Controlled foreign corporation A, which uses the calendar year as the taxable year, has for 1963 \$100 of earnings and profits and 100 shares of only one class of stock outstanding. Domestic corporation M directly owns all such shares during the period from January 1, 1963, through June 30, 1963; on July 1, 1963, M Corporation transfers the stock to domestic corporation N, which owns all such shares throughout the remainder of 1963 and elects to receive a minimum distribution for such year. During June, M Corporation receives a dividend of \$75 from A Corporation. Corporation N's proportionate share of the earnings and profits for 1963 of A Corporation is \$100; however, of the \$75 dividend distributed to M Corporation in such year N Corporation may count only \$49.59 ($\$100 \times 181/365$) toward a minimum distribution.

Example (2). The facts are the same as in example (1) except that M is not a domestic corporation but is a nonresident alien individual. Since A Corporation is not a controlled foreign corporation from January 1, 1963, through June 30, 1963, N Corporation's proportionate share of the earnings and profits of A Corporation for 1963 is \$50.41 ($\$100 \times 184/365$). Corporation N may not count toward a minimum distribution any part of the \$75 dividend distributed to M, since the period from January 1, 1963, through June 30, 1963, was not taken into account in determining N Corporation's proportionate share of the earnings and profits of A Corporation for 1963.

(e) *Inclusion in gross income for the taxable year.* A distribution which counts toward a minimum distribution for the taxable year must be included by the United States shareholder in gross income for such taxable year notwithstanding the fact that such distribution, by reason of its receipt after the close of the taxable year, would otherwise be included in the gross income of a subsequent taxable year. Amounts required under this paragraph to be included in the gross income of the taxable year in respect of which an election is made under section 963 to receive a minimum distribution will not be required to be included in gross income for a subsequent taxable year. For allocation of a distribution to earnings and profits for the taxable year although such distribution is made after the taxable year, see paragraph (c) (1) (ii) of this section and § 1.963-8.

(f) *Distribution period with respect to foreign corporation—(1) Distribution period.* Except as provided by subparagraph (2) of this paragraph, the distribution period with respect to a foreign corporation for its taxable year shall begin immediately after the distribution period for the preceding taxable year and shall end with the close of the 15th day of the third month of the next succeeding taxable year. In case no election to receive a minimum distribution applied to the preceding taxable year, the distribution period for the taxable year shall begin with the 16th day of the third month of the taxable year.

(2) *Extended distribution period.* In the case of any extension of time granted under section 6081 with respect to the

taxable year of the corporate United States shareholder of the foreign corporation, if such shareholder so elects in the statement required to be filed under paragraph (c) (2) (ii) of § 1.963-1, the distribution period with respect to the foreign corporation for its taxable year shall end with the close of the 15th day of the sixth month of its next succeeding taxable year.

(g) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). For 1963 domestic corporation M makes a chain election with respect to controlled foreign corporation A, all of whose one class of stock M Corporation directly owns, and controlled foreign corporation B, all of whose one class of stock is directly owned by A Corporation. All such corporations use the calendar year as the taxable year. Each foreign corporation has earnings and profits of \$100 for 1963. On June 1, 1963, B Corporation distributes earnings and profits of \$120, of which \$20 is from its earnings and profits for 1962. Of the \$120 distributed by B Corporation to A Corporation, \$100 ($\$120$ less $\$20$) is considered to be from B Corporation's 1963 earnings and profits. For 1963, A Corporation pays no income tax and distributes earnings and profits of \$150 to M Corporation. Of such amount \$100 is considered to be from the 1963 earnings and profits of B Corporation; and \$50, from the 1963 earnings and profits of A Corporation. The entire \$150 received by M Corporation from A Corporation would count toward a minimum distribution under section 963 for 1963.

Example (2). Domestic corporation M directly owns all of the one class of stock of controlled foreign corporation A. Both corporations use the calendar year as the taxable year. For 1963, \$50 is included in the gross income of M Corporation under section 951(a) (1) (B) as A Corporation's increase in earnings invested for such year in United States property. For 1964, M Corporation makes a first-tier election with respect to A Corporation. For 1964, A Corporation has earnings and profits of \$100, and \$10 is included in the gross income of M Corporation under section 951(a) (1) (B) as A Corporation's increase in earnings invested for such year in United States property. If A Corporation made no distributions for 1964, no part of such \$10 would count toward a minimum distribution. During 1964, however, A Corporation distributes earnings and profits of \$80 to M Corporation; of this amount \$10 is attributable to A Corporation's 1964 earnings and profits required to be included in M Corporation's gross income under section 951(a) (1) (B). The remaining \$70 received by M Corporation is considered to be from other earnings and profits of A Corporation for 1964. All of the \$80 received by M Corporation counts toward a minimum distribution for 1964.

§ 1.963-6 Methods of satisfying a minimum distribution from a chain or group.

(a) *Pro rata minimum distribution.* Except as provided in paragraph (b) of this section, a United States shareholder shall be considered to receive a minimum distribution, as defined in paragraph (a) of § 1.963-2, for the taxable year from a chain or group only if such shareholder receives for such year from such chain or group a pro rata minimum distribution.

(b) *Non pro rata minimum distribution.* A United States shareholder shall also be considered to receive a minimum

distribution, as defined in paragraph (a) of § 1.963-2, for the taxable year from a chain or group—

(1) If, in lieu of the pro rata minimum distribution referred to in paragraph (a) of this section, such shareholder receives for such year from such chain or group a non pro rata minimum distribution, and

(2) If either—

(i) The sum of the consolidated foreign income taxes, of the foreign income tax paid or accrued for the taxable year by reason of the distribution which is made, and of the United States income tax paid or accrued on amounts received by such shareholder from such distribution equals or exceeds the lesser of—

(a) The sum of such taxes which would be paid or accrued if such shareholder were to receive for such year a pro rata minimum distribution referred to in paragraph (a) of this section, or

(b) Ninety-one percent of an amount determined by multiplying the pretax and predistribution consolidated earnings and profits of the chain or group by a percentage which equals the sum of the normal tax rate and the surtax rate (determined without regard to the surtax exemption) for the taxable year prescribed by section 11, or

(ii) The amount of the foreign income tax allowable as a credit for such year under section 901, with respect to the distribution which is made, is reduced and credit for the reduction is deferred, as provided in paragraph (c) of § 1.963-7, so that the sum of the consolidated foreign income taxes, of the foreign income tax paid or accrued for the taxable year by reason of the distribution which is made, and of the United States income tax paid or accrued on amounts received by such shareholder from such distribution equals the lesser of the amounts determined under subdivision (i) (a) and subdivision (i) (b) of this subparagraph.

(c) *Definitions.* For purposes of §§ 1.963-1 to 1.963-9, inclusive—

(1) *Pro rata minimum distribution.* A pro rata minimum distribution from a chain or group for the taxable year is a distribution of earnings and profits to the United States shareholder, with respect to stock to which the election relates, which at least equals "the proportionate share of the minimum percentage of the taxable year's earnings and profits" (as defined in the first sentence of paragraph (c) (1) of § 1.963-2 or in paragraph (c) (2) (i) of such section, as the case may be, and as reduced by deficits as provided in paragraph (b) (2) (ii) of § 1.963-3) from each foreign corporation in such chain or group, computed by using a percentage for each such corporation which equals or exceeds the minimum percentage applicable to such chain or group under paragraph (b) of § 1.963-2.

(2) *Non pro rata minimum distribution.* A non pro rata minimum distribution from a chain or group for the taxable year is a distribution of earnings and profits to the United States shareholder, with respect to stock to which the election relates, which at least equals "the proportionate share of the minimum percentage of the taxable year's

consolidated earnings and profits" (as defined in the second sentence of paragraph (c) (1) of § 1.963-2 or in paragraph (c) (2) (ii) of such section, as the case may be) of such chain or group but is not a pro rata minimum distribution from such chain or group.

(d) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). Domestic corporation M makes a group election for its taxable year

with respect to a group consisting of two directly, wholly owned subsidiaries, controlled foreign corporations A and B, from each of which it draws a distribution of 75 percent of the earnings and profits for the taxable year in order to satisfy the requirements for a pro rata minimum distribution. Neither foreign corporation is a less developed country corporation within the meaning of section 902(d). The facts, and the resulting overall United States and foreign income tax (computed without regard to the United States surtax exemption) based on such facts, are as follows:

	A	B	
	Corpo-	Corpo-	Total
	ration	ration	
Pretax and predistribution earnings and profits	\$100	\$100	\$200
Foreign income tax	40	20	
Consolidated foreign income taxes			60
Earnings and profits	60	80	
Consolidated earnings and profits			140
Effective foreign tax rate ($\$60/[\$60 + \$140]$)			30%
Minimum percentage prescribed by sec. 963(b)			75%
Pro rata minimum distribution:			
($0.75 \times \$60$)	45		
($0.75 \times \$80$)		60	105
Gross-up under sec. 78:			
($\$45/\$60 \times \$40$)	30		
($\$60/\$80 \times \$20$)		15	45
Taxable income of M Corporation attributable to minimum distribution	75	75	150
U.S. tax before foreign tax credit ($\$150 \times 0.52$)			78
Foreign tax credit (see gross-up)			45
U.S. tax payable			33
Overall U.S. and foreign income tax ($\$60 + \$33$)			93

Example (2). The facts are the same as in example (1) except that the United States shareholder decides to cause a non pro rata minimum distribution of \$105 to be made by the group; such distribution consists of all of A Corporation's earnings and profits and of \$45 of B Corporation's earnings and profits. Although M Corporation thereby receives on the stock to which the election relates distributions sufficient in amount to equal its proportionate share of the minimum percentage of the taxable year's consolidated earnings and profits (75 percent of \$140), the increase in foreign tax credit by reason of the increased distribution from A Corporation, which is subject to a higher foreign income tax rate than B Corporation, has the effect of reducing the United States income tax attributable to such distributions so that the sum of M Corporation's consolidated foreign income taxes and of the United States income tax paid or accrued on the amount received is less than the amount which such sum would have been if M Corporation had received a pro rata minimum distribution from the group for the taxable year. The distribution which is made will constitute a non pro rata minimum distribution and satisfy the minimum distribution requirement only if the amount of foreign tax credit is reduced, and credit deferred, so that the sum of the consolidated foreign income taxes, of the foreign income tax paid or accrued by reasons of the distribution, and of the United States income tax paid or accrued on the amount received equals for the taxable year the lesser of \$93, the amount which such sum would have been if M Corporation had received a pro rata minimum distribution, or of \$94.64 (91 percent of 52 percent of the pretax and predistribution consolidated earnings and profits of \$200). Assuming such a deferral of foreign tax credit, the minimum distribution is determined as follows:

	A	B	
	Corpo-	Corpo-	Total
	ration	ration	
Non pro rata minimum distribution	\$60	\$45.00	\$105.00
Gross-up under sec. 78:			
($\$60/\$60 \times \$40$)	40		
($\$45/\$80 \times \$20$)		11.25	51.25
Taxable income of M Corporation attributable to minimum distribution	100	56.25	156.25
Tentative U.S. tax before foreign tax credit ($\$156.25 \times 0.52$)			81.25
Tentative foreign tax credit (see gross-up)			51.25
U.S. tax payable after tentative foreign tax credit ($\$81.25 - \$51.25$)			30.00
Insufficient overall U.S. and foreign income tax ($\$93$ [from example (1)] less [$\$60 + \$30$])			3.00
Deferred foreign tax credit (computed as provided in § 1.963-7(c))			3.00
Reduced foreign tax credit ($\$51.25 - \$3$)			48.25
U.S. tax payable after reduced foreign tax credit ($\$81.25 - \$48.25$)			33.00
Overall U.S. and foreign income tax ($\$60 + \$33$)			93.00

§ 1.963-7 Foreign tax credit with respect to minimum distributions.

(a) *In general.* The foreign tax credit of a corporate United States shareholder with respect to a minimum distribution received for the taxable year shall be determined under the provisions of sections 901 to 905, inclusive, but by taking into account the following:

(1) The nonaveraging under paragraph (b) (1) of this section—

(i) Of taxes of a second-tier corporation making a distribution through a first-tier corporation with taxes of such first-tier corporation,

(ii) Of taxes of a first-tier corporation or a second-tier corporation on a distribution made through such corporation with such corporation's taxes on its other income, and

(iii) Of tax of a foreign corporation on its distributed profits with its tax on

undistributed profits where the amount of tax paid or accrued by such foreign corporation depends upon the distributions made;

(2) The reduction and deferral of foreign tax credit provided by paragraph (c) of this section in the case of a distribution which is not a pro rata minimum distribution; and

(3) The taking of foreign tax credit previously deferred under paragraph (c) of this section upon the subsequent distribution of earnings and profits to which such deferred credit is allocated under such paragraph.

(b) *Nonaveraging of tax—*(1) *Year of minimum distribution—*(i) *Taxes deemed paid under section 902(b).* If, by successive distributions through a chain or group, a United States shareholder receives for a taxable year a distribution of the earnings and profits for such year of any corporation in such chain or group, and if both section 902(a) and section 902(b) apply with respect to such distribution, all the taxes deemed paid under section 902(b) by the first-tier corporation described in section 902(a) with respect to such distribution of such earnings and profits shall be deemed paid by the United States shareholder for such taxable year under section 902(a) with respect to the earnings and profits so distributed and, notwithstanding the rules otherwise applicable under section 902, no part of the taxes so deemed paid by such first-tier corporation shall be attributed to other earnings and profits of such first-tier corporation for such year and no part of the taxes paid or accrued with respect to such other earnings and profits shall be attributed to the earnings and profits so received as a distribution.

(ii) *Taxes paid for purposes of section 902 (a) or (b).* If, by successive distributions through a chain or group, a United States shareholder receives for a taxable year a distribution of the earnings and profits for such year of any corporation in such chain or group, then in applying section 902(a) with respect to such distribution through a first-tier corporation described in section 902(a), or in applying section 902(b), with respect to such distribution through a second-tier corporation described in section 902(b), as the case may be, the taxes which shall be taken into account in determining taxes deemed paid under such section shall be the foreign income tax actually paid or accrued for the taxable year by such first-tier or second-tier corporation, as the case may be, with respect to such distribution; and, notwithstanding the rules otherwise applicable under section 902, no part of the taxes so paid by such first-tier or second-tier corporation shall be attributed to other earnings and profits of such corporation for such year and no part of the taxes paid or accrued with respect to such other earnings and profits shall be attributed to the earnings and profits so received as a distribution. For purposes of section 902 and this subdivision, if a distribution which is made for the taxable year by a first-tier corporation in a chain or group with respect to stock to which the election to receive a

minimum distribution relates is allocated under paragraph (c) (1) of § 1.963-5 to the earnings and profits received from a second-tier corporation in such chain or group as a distribution for such year solely by reason of the application of such paragraph, any foreign income tax paid, or deemed paid, by reason of the receipt of such distribution by such first-tier corporation shall be treated as paid or accrued for such year. The rule set forth in the preceding sentence shall also apply with respect to a distribution of earnings and profits received by a second-tier corporation from another foreign corporation in the chain or group.

(iii) *Tax rate dependent upon distributions.* If a United States shareholder receives for a taxable year a distribution of the earnings and profits for the taxable year of a foreign corporation whose foreign income tax rate depends upon the amount of distributions made and which is a first-tier corporation or a second-tier corporation described in section 902 (a) or (b), as the case may be, then only the foreign income tax which is effectively applicable to pretax earnings and profits to which are attributable the earnings and profits which are distributed shall be deemed paid for such year under section 902 (a) or (b), as the case may be, and the foreign income tax so paid or accrued by such corporation shall not be averaged, for purposes of such section, with its foreign income tax paid or accrued for such year on its pretax earnings and profits to which are attributable the earnings and profits which are not distributed.

(2) *Year of distribution of remaining earnings and profits.* If for a taxable year in respect of which a United States shareholder elects to and does receive a minimum distribution—

(i) The foreign income tax which is paid or accrued by a foreign corporation for such year, by reason of the receipt and payment of earnings and profits counting toward such minimum distribution, is deemed paid under subparagraph (1) (i) or (ii) of this paragraph,

(ii) The foreign income tax rate of a foreign corporation for such year depends, as provided in subparagraph (1) (iii) of this paragraph, on distributions counting toward such minimum distribution,

(iii) The pretax and predistribution earnings and profits for such year of a foreign corporation in a chain or group with respect to stock on which such minimum distribution is received are reduced by reason of the deduction under paragraph (a) (1) (ii) of § 1.963-3 of earnings and profits no part of which is taken into account in determining the distribution by such foreign corporation which counts toward such minimum distribution, or

(iv) Such shareholder's proportionate share of the earnings and profits for such year of a foreign corporation in a chain or group making a distribution counting toward such minimum distribu-

tion is reduced by the allocation thereto under paragraph (b) (2) (ii) of § 1.963-3 of a portion of the deficit of another foreign corporation in such chain or group,

the pretax and predistribution earnings and profits of such foreign corporation for such year to which such minimum distribution is attributable and the foreign income tax which is taken into account in determining tax deemed paid under section 902 on such pretax and predistribution earnings and profits shall not be taken into account in the application of such section when other earnings and profits of such foreign corporation for such year are distributed to such shareholder. For the purpose of applying the preceding sentence to a case in which subdivision (iv) of this subparagraph applies, the pretax and predistribution earnings and profits of the foreign corporation to which the minimum distribution is attributable shall be the amount of such corporation's earnings and profits distributed and counting toward such minimum distribution plus the taxes of such foreign corporation

allocated thereto in determining the taxes deemed paid under section 902 for the taxable year of the minimum distribution.

(3) *Illustrations.* This paragraph may be illustrated by the following examples:

Example (1). Domestic corporation M makes a chain election for 1963 with respect to controlled foreign corporation A, which is wholly owned directly by M Corporation, and controlled foreign corporation B, which is wholly owned directly by A Corporation. Each corporation uses the calendar year as the taxable year. In 1963, corporations A and B are subject to foreign income tax at the rates of 20 percent and 30 percent, respectively, with no deduction being allowed for dividends received or paid; each such corporation has pretax and predistribution earnings and profits of \$100 and makes a pro rata minimum distribution for such year. Corporation A is not a less developed country corporation within the meaning of section 902(d). The 1963 foreign income tax of corporations A and B which is deemed paid under section 902(a) for 1963, and the remaining tax which is allocated to earnings and profits to be distributed to M Corporation in future years, are computed as follows:

	A	B	Total
Pretax and predistribution earnings and profits	\$100	\$100	\$200
Foreign income tax	20	30	50
Consolidated earnings and profits	80	70	150
Effective foreign tax rate ($\$50/[\$150 + \$50]$)			25%
Minimum percentage prescribed by sec. 963(b)			82%
Amount distributed as pro rata minimum distribution for 1963:			
($0.82 \times \$80$)	65.60		
($0.82 \times \$70$)		57.40	123.00
Amount received by M Corporation as pro rata minimum distribution:			
A Corporation's distribution	65.60		
B Corporation's distribution ($\$57.40 - [0.20 \times \$57.40]$), or ($\$57.40 - \$11.48$)		45.92	111.52
Tax deemed paid by M Corporation for 1963 for purposes of gross-up under sec. 78 and foreign tax credit:			
($\$65.60/\$80 \times \$20$)	16.40		
($[\$45.92/\$45.92 \times \$11.48] + [\$57.40/\$70 \times \$30]$) or ($\$11.48 + \$24.60$)		36.08	52.48
Remaining 1963 earnings and profits for future distribution to M Corporation:			
($\$80 - \$65.60$)	14.40		
($\$70 - \$57.40$)		12.60	27.00
Foreign income tax attributable to 1963 earnings and profits remaining for future distribution to M Corporation:			
($\$14.40/\$80 \times \$20$)	3.60		
($\$12.60/\$70 \times \$30$)		5.40	9.00

Example (2). The facts are the same as in example (1) except that A Corporation pays foreign income tax at the rate of 30 percent and B Corporation at the rate of 20 percent; and A Corporation is allowed a deduction, in computing its income subject to tax, for the full amount of dividends received. The computation of tax deemed paid is as follows:

	A	B	Total
Pretax and predistribution earnings and profits	\$100	\$100	\$200
Foreign income tax	30	20	50
Consolidated earnings and profits	70	80	150
Effective foreign tax rate ($\$50/[\$150 + \$50]$)			82%
Minimum percentage prescribed by sec. 963(b)			25%
Amount distributed by foreign corporations as a pro rata minimum distribution for 1963 and amount received by M Corporation:			
($0.82 \times \$70$)	57.40		
($0.82 \times \$80$)		65.60	123.00
Tax deemed paid by M Corporation for 1963 for purposes of gross-up under sec. 78 and foreign tax credit:			
($\$57.40/\$70 \times \$30$)	24.60		
($\$65.60/\$80 \times \$20$)		16.40	41.00
Remaining 1963 earnings and profits for future distribution to M Corporation:			
($\$70 - \$57.40$)	12.60		
($\$80 - \$65.60$)		14.40	27.00
Foreign income tax attributable to 1963 earnings and profits remaining for future distribution to M Corporation:			
($\$12.60/\$70 \times \$30$)	5.40		
($\$14.40/\$80 \times \$20$)		3.60	9.00

Example (3). For 1963 domestic corporation M receives a dividend of \$21 from B Corporation which counts toward a minimum distribution from a group. Both corporations use the calendar year as the taxable year. Foreign law imposes on B Corporation an income tax of 40 percent of the year's pretax earnings and profits, less dividends paid for such year, and of 20 percent of such dividends. Corporation M directly owns 70 percent of the one class of stock of B Corporation, which for 1963 has pretax earnings and profits of \$100. Corporation B is not a less developed country corporation under section 902(d). In late 1964, M Corporation receives a distribution of all of B Corporation's 1964 earnings and profits and of \$25.20 from its 1963 earnings and profits. The foreign income tax of B Corporation deemed paid for 1963 by M Corporation under section 902(a) is based on the foreign income tax actually paid by B Corporation on an amount of pretax earnings and profits which, when reduced by the tax so paid, equals the total dividend which is paid. The computation of tax deemed paid by M Corporation with respect to distributions from 1963 earnings and profits of B Corporation is as follows:

1963	
Pretax earnings and profits of B Corporation for 1963	\$100
Total dividend paid by B Corporation in 1963 (\$21/0.70)	30
Total foreign income tax paid by B Corporation for 1963 $(0.40[\$100 - \$30] + [0.20 \times \$30])$ or $(\$28 + \$6)$	34
Foreign income tax, represented by "t" in the following formula, to be taken into account in computing tax deemed paid under sec. 902(a) by M Corporation:	
$t = (0.20 \times \$30) + 0.40t$	
$t = \$6 + 0.40t$	
$0.60t = \$6$	
$t = \$6/0.60$, or	10
Foreign income tax deemed paid by M Corporation for 1963 $(\$21/\$30 \times \$10)$	7
1964	
Remaining 1963 earnings and profits of B Corporation $(\$100 - \$34 - \$30)$ or $(\$66 - \$30)$	36
Dividend received by M Corporation for 1964 $(0.70 \times \$36)$	25.20
Foreign income tax deemed paid by M Corporation for 1964 $(\$25.20/\$36 \times [\$34 - \$10])$ or $(\$25.20/\$36 \times \$24)$	16.80

(c) **Non pro rata minimum distribution—(1) Reduction and deferral of foreign tax credit.** (i) A non pro rata minimum distribution received for any taxable year by a United States shareholder from the consolidated earnings and profits for the taxable year of a chain or group may qualify as a minimum distribution for such year only if the amount of the foreign income tax allowable as a credit for such year under section 901 with respect to such distribution is reduced, when necessary, so that the sum of the consolidated foreign income taxes, of the foreign income tax paid or accrued for the taxable year by reason of the distribution, and of the United States income tax paid or accrued on amounts received by such shareholder from such distribution equals the lesser of the amounts determined under subdivision (i) (a) and subdivision (i) (b) of paragraph (b) (2) of § 1.963-6.

(ii) The sum of foreign and United States income taxes shall be determined, for purposes of subdivision (i) of this subparagraph, without taking into account any foreign income tax which is deemed paid for such year under section 904(d), relating to carryback and carryover of excess tax paid. Moreover, a carryback or carryover of tax to such year under such section which arises in another taxable year of the United States shareholder by reason of a non pro rata minimum distribution from any chain or group may be deemed paid or accrued in such year in determining the foreign tax credit under section 901 with respect to any minimum distribution from a chain or group only to the extent the use of such carryback or carryover for purposes of such credit does not reduce the amount, as determined under subdivision (i) of this subparagraph, of the United States income tax which would be paid or accrued with respect to a pro rata minimum distribution from such chain or group for such year. Such carryback or carryover to such year may in no event be used to reduce the tax of the United States shareholder under chapter 1 of the Code on a minimum distribution for such year on stock of a single first-tier corporation which for such other taxable year was as to such shareholder included in the chain or group which gave rise to such carryback or carryover.

(iii) The amount of the reduction in foreign tax credit which is determined under subdivision (i) of this subparagraph shall be allocated, and deferred to subsequent taxable years, in the manner provided by subparagraphs (2) and (3), respectively, of this paragraph.

(2) **Allocation of reduction in foreign tax credit.** The amount of any reduction in foreign tax credit for the taxable year which is made under subparagraph (1) (i) of this paragraph with respect to a chain or group shall be allocated among any first-tier and second-tier corporations described in section 902 (a) and (b), respectively, which are in such chain or group. The amount of any such reduction in foreign tax credit shall be allocated among such first-tier and second-tier corporations in the ratio which the United States shareholder's proportionate share of undistributed earnings and profits of each such corporation for the taxable year bears to the total of such shareholder's proportionate shares of the undistributed earnings and profits of all such corporations for such year.

(3) **Deferral of allocated credit.** (i) A portion of the reduction in foreign tax credit allocated to a first-tier or second-tier corporation in the chain or group for a taxable year under subparagraph (2) of this paragraph shall be deemed paid under section 902 (when applying paragraph (b) (2) of this section) with respect to distributions, to the extent made by such corporation to the United States shareholder referred to in subparagraph (2) of this paragraph, in a subsequent taxable year from the undistributed earnings and profits of such corporation for such year of allocation.

The portion so deemed paid shall be an amount which bears to the total of such reduction in foreign tax credit the same ratio that the distribution to the shareholder in the subsequent year bears to such shareholder's proportionate share of such undistributed earnings and profits for the year of allocation.

(ii) The portion so deemed paid for such subsequent year shall be allowed as a credit under section 901 (without regard to the limitations under section 904) as a credit against tax imposed for such year by chapter 1 of the Code, but the amount of such credit shall not exceed the excess of the tax so imposed for such year over the credit (determined without regard to this subparagraph) allowed under sections 901 through 905 for such year. Any amount by which the portion so deemed paid in such subsequent year exceeds the limitation under the preceding sentence shall not be carried back or carried over under section 904(d) to another taxable year of the United States shareholder. No credit shall be allowed under this subparagraph for the subsequent taxable year to the extent that the credit would reduce the tax of the United States shareholder under chapter 1 of the Code on a minimum distribution for such year to which section 963 applies.

(iii) Any amount allowed as a credit for a subsequent taxable year under this subparagraph shall not be included in the gross income of the United States shareholder for such year under section 78.

(d) **Illustrations.** The application of this section may be illustrated by the following examples:

Example (1). (i) For 1963 domestic corporation M makes a chain election with respect to controlled foreign corporation A, which it wholly owns directly, and controlled foreign corporation B, which A Corporation wholly owns directly. Corporation A is not a less developed country corporation under section 902(d). All corporations use the calendar year as the taxable year. Each of the foreign corporations has earnings and profits of \$100 for 1963 before reduction for foreign income tax. The income of A Corporation is subject to a foreign income tax rate of 20 percent, with no deduction being allowed for dividends received or paid; and the income of B Corporation is subject to a foreign income tax rate of 30 percent on such basis.

(ii) If a pro rata minimum distribution were made for 1963, the chain would be required to distribute earnings and profits of \$123, based upon an effective foreign tax rate of 25 percent $(\$50/[\$50 + \$150])$ and a minimum percentage of 82 percent under section 963(b); of this amount $\$57.40$ $(0.82 \times \$70)$ would be distributed from B Corporation's earnings and profits and $\$65.60$ $(0.82 \times \$80)$ would be distributed from A Corporation's earnings and profits. In such case the overall United States and foreign income tax for 1963 would be determined as follows, assuming no surtax exemption under section 11(c):

Amount which would be received from a pro rata minimum distribution (computed in example (1) of § 1.963-7(b) (3))	\$111.52
Gross-up under sec. 78 (computed in example (1) of § 1.963-7(b) (3))	52.48

Taxable income of M Corporation.....	\$164.00
U.S. tax before credit (164×0.52).....	85.28
Less: Foreign tax credit (as computed under the gross-up).....	52.48
U.S. tax payable.....	32.80

Overall U.S. and foreign income tax ($32.80 + \$11.48 + \$50$) (example (1) of § 1.963-7(b)(3)).....	94.28
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(iii) The chain, however, makes a non pro rata minimum distribution of \$123 for 1963, consisting of \$65 from B Corporation's earnings and profits and \$58 from A Corporation's earnings and profits, which is equal to M Corporation's proportionate share of the minimum percentage of the consolidated earnings and profits $0.82 \times \$150$. Thus, M Corporation must make such a reduction in its foreign tax credit that the overall United States and foreign income tax for 1963 equals the lesser of \$94.28 (the overall amount which would be paid if a pro rata minimum distribution were received) and \$94.64 (91 percent of 52 percent of the pretax consolidated earnings and profits of \$200). The remaining 1963 earnings and profits of the chain are distributed late in 1964. For 1964, B Corporation has no earnings and profits, and A Corporation has no earnings and profits other than the distribution from B Corporation. Corporation M computes its tax as follows for such years, assuming no surtax exemption under section 11(c):

1963

Taxable income of M Corporation:	
Dividend—	
From B Corporation's earnings and profits (\$65 minus tax of \$13 on A Corporation at the rate of 20 percent).....	\$52.00
From A Corporation's earnings and profits.....	58.00
	\$110.00
Gross-up under sec. 78:	
B Corporation's distribution ($[\$65/\$70 \times \$30] + [\$52/\$52 \times \$13]$) or ($\$27.86 + \$13$).....	40.86
A Corporation's distribution ($\$58/\$80 \times \$20$).....	14.50
	55.36
Taxable income for 1963.....	165.36
U.S. tax before foreign tax credit (165.36×0.52).....	86.00
Less: Tentative foreign tax credit (as computed under the gross-up above).....	55.36
Tentative U.S. tax payable.....	30.64
Tentative overall U.S. and foreign income tax ($\$50 + \$13 + \$30.64$).....	93.64
Overall U.S. and foreign income tax that would have been paid if a pro rata minimum distribution had been made (subdivision (ii) of this example).....	94.28
Insufficient overall U.S. and foreign income tax ($\$94.28 - \$93.64$).....	.64
Reduced foreign tax credit ($\$55.36 - \$0.64$).....	54.72
U.S. tax payable ($\$86.00 - \$54.72$).....	31.28
Overall U.S. and foreign income tax ($\$50 + \$13 + \$31.28$).....	94.28
Reduction in foreign tax credit to be deferred ($\$55.36 - \$54.72$).....	.64

1963—Continued

Allocation of reduction in foreign tax credit to undistributed 1963 earnings and profits of corporations A and B:	
M Corporation's proportionate share of undistributed earnings and profits for 1963 of—	
A Corporation ($\$80 - \$58$).....	\$22.00
B Corporation ($\$70 - \$65$).....	5.00
	\$27.00
Allocation of reduction to—	
A Corporation ($\$22/\$27 \times \$0.64$).....	.52
B Corporation ($\$5/\$27 \times \$0.64$).....	.12

1964

Taxable income of M Corporation:	
Dividend—	
From B Corporation's remaining 1963 earnings and profits (\$5 minus tax of \$1 on A Corporation at the rate of 20 percent).....	\$4.00
From A Corporation's remaining 1963 earnings and profits.....	22.00
	\$26.00
Gross-up under sec. 78:	
B Corporation's distribution ($[\$4/\$4 \times \$1] + [\$5/\$5 \times (\$30 - \$27.86)]$ or ($\$1 + \$2.14$).....	3.14
A Corporation's distribution ($\$22/\$22 \times [\$20 - \$14.50]$).....	5.50
	8.64
Taxable income for 1964.....	34.64
U.S. tax before foreign tax credit ($0.52 \times \$34.64$).....	18.01
Less: Foreign tax credit:	
Deferred credit allocated in 1963 to—	
A Corporation ($\$22/\$22 \times \$0.52$).....	.52
B Corporation ($\$5/\$5 \times \$0.12$).....	.12
Other tax deemed paid under sec. 902 (as computed under the gross-up).....	8.64
	9.28
U.S. tax payable for 1964.....	8.73

Example (2). (i) The facts are the same as in example (1) except that A Corporation is a less developed country corporation under section 902(d). Corporation M must make such a reduction in its foreign tax credit that the overall United States and foreign income tax for 1963 equals the lesser of \$79.95 (the overall amount which would be paid if a pro rata minimum distribution were received) and \$94.64 (91 percent of 52 percent of the pretax consolidated earnings and profits of \$200). In such case, the overall United States and foreign income tax on a pro rata minimum distribution would be determined as follows:

Taxable income.....	\$111.52
U.S. tax before foreign tax credit ($0.52 \times \$111.52$).....	57.99
Foreign tax credit:	
B Corporation's distribution ($\$57.40/[\$70 + \$30] \times \$30$) + ($\$45.92/[\$45.92 + \$11.48] \times \$11.48$).....	\$26.40
A Corporation's distribution ($\$65.60/[\$80 + \$20] \times \$20$).....	13.12
	39.52
U.S. tax payable.....	18.47
Overall U.S. and foreign income tax ($\$18.47 + \$50 + \$11.48$).....	79.95

(ii) The United States tax on the non pro rata minimum distribution, however, for 1963, and on the distribution in 1964 of the remaining 1963 earnings and profits is determined as follows:

1963

Dividend from earnings and profits of—	
B Corporation (\$65 minus tax of \$13 on A Corporation at the rate of 20 percent).....	\$52.00
A Corporation.....	58.00
Taxable income of M Corporation for 1963.....	110.00
Tentative U.S. tax before foreign tax credit ($0.52 \times \$110$).....	57.20
Less: Tentative foreign tax credit	
B Corporation's distribution ($[\$30 \times \$65/\$70 - \$30] + [\$13 \times \$52/\$52 + \$13]$) or ($\$19.50 + \$10.40$).....	\$29.90
A Corporation's distribution ($\$20 \times \$58/[\$80 + \$20]$).....	11.60
	41.50
Tentative U.S. tax payable.....	15.70
Tentative overall U.S. and foreign income tax ($\$13 + \$50 + \$15.70$).....	78.70
Overall U.S. and foreign income tax that would have been paid if a pro rata minimum distribution had been made (subdivision (i) of this example).....	79.95
Insufficient overall U.S. and foreign income tax ($\$79.95 - \$78.70$).....	1.25
Reduced foreign income tax allowable as foreign tax credit ($\$41.50 - \$1.25$).....	40.25
U.S. tax payable for 1963 ($\$57.20 - \$40.25$).....	16.95
Overall U.S. and foreign income tax ($\$50 + \$13 + \$16.95$).....	79.95
Allocation of reduction in foreign tax credit to undistributed 1963 earnings and profits of—	
A Corporation ($\$22/\$27 \times \$1.25$).....	1.02
B Corporation ($\$5/\$27 \times \$1.25$).....	.23
	1.25
Dividend from remaining 1963 earnings and profits of—	
B Corporation (\$5 minus tax of \$1 on A Corporation at the rate of 20 percent).....	\$4.00
A Corporation.....	22.00
Taxable income of M Corporation for 1964.....	26.00

PROPOSED RULE MAKING

1964—Continued

Foreign income tax for 1963 not taken into account in determining tax deemed paid for such year on pre-tax earnings and profits to which the minimum distribution for such year was attributable:

B Corporation (\$5/\$70 × \$30) -----	\$2.14
A Corporation (\$22/\$80 × \$20) -----	5.50

\$7.64

U.S. tax before foreign tax credit (\$26 × 0.52) -----

13.52

Less: Foreign tax credit:

Deferred credit allocated in 1963 to—

B Corporation (\$5/\$5 × \$0.23) -----	0.23
A Corporation (\$22/\$22 × \$1.02) -----	1.02

Other taxes deemed paid under section 902:

B Corporation's distribution (\$1 × \$4 / (\$4 + \$1)) + [\$2.14 × \$5 / (\$5 + \$2.14)] -----	2.30
A Corporation's distribution (\$5.50 × \$22 / [\$22 + \$5.50]) -----	4.40

7.95

U.S. tax payable for 1964 -----

5.57

Example (3). (i) For 1963 domestic corporation M makes a group election with respect to controlled foreign corporations A and B, both of which M corporation wholly owns directly. All such corporations use the calendar year as the taxable year. Corporation A is created under the laws of foreign country X, and B Corporation is created under the laws of foreign country Y; neither of such corporations is a less developed country corporation under section 902(d). Each foreign corporation has pretax earnings and profits of \$100 for 1963 derived entirely from sources within the country of incorporation. The income of A Corporation is subject to a foreign income tax rate of 20 percent, and the income of B Corporation is subject to a foreign income tax rate of 30 percent. Corporation M uses the per-country limitation under section 904(a)(1) on the foreign tax credit for 1963.

(ii) If a pro rata minimum distribution were made for 1963, the group would distribute \$123 based upon an effective foreign tax rate of 25 percent, consisting of \$57.40 from B Corporation and \$65.60 from A Corporation. In such case, the overall United States and foreign income tax would be determined as follows, assuming no surtax exemption:

Taxable income of M Corporation from sources in—

Y Country:

B Corporation dividend -----	\$57.40
Gross-up under sec. 78 (\$57.40/\$70 × \$30) -----	24.60

\$82.00

X Country:

A Corporation dividend -----	65.60
Gross-up under sec. 78 (\$65.60/\$80.00 × \$20) -----	16.40

82.00

Taxable income -----

164.00

U.S. tax before tax credit (0.52 × \$164) -----

85.28

Foreign tax credit:

Y Country tax -----	\$24.60
X Country tax -----	16.40

41.00

U.S. tax payable -----

\$44.28

Overall U.S. and foreign income tax (\$44.28 + \$50) -----

94.28

(iii) The group, however, makes a non pro rata minimum distribution of \$123 for 1963, consisting of \$65 from B Corporation's earnings and profits and \$58 from A Corporation's earnings and profits. The remaining 1963 earnings and profits of the group are distributed late in 1964. Neither A Corporation nor B Corporation has earnings and profits for 1964. Corporation M computes its tax as follows for such years:

1963

Taxable income of M Corporation from sources in—

Y Country:

B Corporation dividend -----	\$65.00
Gross-up under sec. 78 (\$65/\$70 × \$30) -----	27.86

\$92.86

X Country:

A Corporation dividend -----	58.00
Gross-up under sec. 78 (\$58/\$80 × \$20) -----	14.50

72.50

Taxable income for 1963 -----

165.36

U.S. tax before foreign tax credit (0.52 × \$165.36) -----

85.99

Less: Tentative foreign tax credit:

Y Country tax (\$27.86 but not to exceed (\$92.86 / \$165.36 × \$85.99)) -----	27.86
X Country tax (\$14.50 but not to exceed (\$72.50 / \$165.36 × \$85.99)) -----	14.50

42.36

Tentative U.S. tax payable -----

43.63

Tentative overall U.S. and foreign income tax (\$50 + \$43.63) -----

93.63

Overall U.S. and foreign income tax that would have been paid if a pro rata minimum distribution had been made (subdivision (ii) of this example) -----

94.28

Insufficient overall U.S. and foreign income tax (\$94.28 - \$93.63) -----

.65

Reduced foreign tax credit (\$42.36 - \$0.65) -----

41.71

U.S. tax before foreign tax credit -----

85.99

Less: Foreign tax credit -----

41.71

U.S. tax payable for 1963 -----

44.28

Overall U.S. and foreign income tax (\$50 + \$44.28) -----

94.28

Reduction in foreign tax credit to be deferred (\$42.36 - \$41.71) -----

.65

Allocation of reduction in foreign tax credit to undistributed 1963 earnings and profits of—

B Corporation (\$5/\$27 × \$0.65) -----	.12
A Corporation (\$22/\$27 × \$0.65) -----	.53

1964

Taxable income of M Corporation from sources in—

Y Country:

B Corporation dividend -----	\$5.00
Gross-up under sec. 78 (\$5/\$5 × [\$30 - \$27.86]) -----	2.14

\$7.14

X Country:

A Corporation dividend -----	22.00
Gross-up under sec. 78 (\$22/\$22 × [\$20 - \$14.50]) -----	5.50

27.50

1964—Continued

Taxable income of M Corporation for 1964 -----

\$34.64

U.S. tax before foreign tax credit (\$34.64 × 0.52) -----

18.01

Less: Foreign tax credit:

Deferred credit:

B Corporation (\$5/\$5 × \$0.12) -----	\$0.12
A Corporation (\$22/\$22 × \$0.53) -----	.53

Other tax deemed paid under sec. 902 (computed under gross-up above):

X Country -----	5.50
Y Country -----	2.14

8.29

U.S. tax payable for 1964 -----

9.72**§ 1.963-8 Deficiency distribution.**

(a) *In general.* Section 963(e)(2) and this section provide a method under which, by virtue of a deficiency distribution, a United States shareholder may be relieved from the payment of a deficiency in tax for any taxable year arising by reason of failure to include subpart F income in gross income under section 951(a)(1)(A)(i), when it has been determined that such shareholder has failed to receive a minimum distribution for such year in respect of which it elected to receive such a distribution under section 963. In addition, this section provides rules with respect to a credit or refund of part or all of any such deficiency which has been paid. Under the method provided, the benefit of the exclusion of subpart F income from gross income of the United States shareholder is allowed retroactively to the taxable year in respect of which the election under section 963 applied, but only if the subsequent deficiency distribution meets the requirements of this section. The benefits of the retroactive exclusion will not, however, prevent the assessment of interest, additional amounts, and assessable penalties.

(b) *Requirements for deficiency distribution.* (1) If—

(i) A United States shareholder, in making its return of the tax imposed by chapter 1 of the Code for any taxable year, elects under section 963 to receive a minimum distribution for such year, and

(ii) It is subsequently determined (within the meaning of paragraph (c) of this section) that an exclusion under section 963 of subpart F income with respect to stock to which such election relates does not apply for such taxable year because of the failure of such shareholder to receive a minimum distribution for such year with respect to such stock, and

(iii) Such failure is due to reasonable cause,

a deficiency distribution which is received by such shareholder with respect to such stock from a foreign corporation which was the single first-tier corporation, or a corporation in the chain or group, as the case may be, with respect to which the election was made, shall count toward a minimum distribution under section 963 for such year of

election if such deficiency distribution is received on, or within 90 days after, the date of such determination and prior to the filing of a claim under paragraph (d) of this section. Such claim must be filed within 120 days after the date of such determination, and the deficiency distribution must be of such a nature as would have permitted it to count toward a minimum distribution for the taxable year of the election if it had been received by the United States shareholder during such year.

(2) If—

(i) In case of a first-tier election, the United States shareholder's proportionate share of the earnings and profits of the foreign corporation which was the single first-tier corporation, or

(ii) In case of a chain or group election, any portion of the share of any corporation or corporations (which were in the chain or group) of the consolidated earnings and profits,

for the taxable year of the election has not been distributed on the stock with respect to which the election was made, then a distribution, in order to be counted toward a deficiency distribution, must be made by such corporation or corporations and from such earnings and profits to the extent thereof. Once all such earnings and profits of such corporation or corporations have been completely distributed, a deficiency distribution may be made from other earnings and profits of such foreign corporation which was a single first-tier corporation, or of such corporation or corporations which were in such chain or group, as the case may be.

(3) Reasonable cause for failure to receive a minimum distribution shall be deemed to exist, in the absence of circumstances demonstrating bad faith, if the electing United States shareholder receives, within the distribution period with respect to such shareholder for its taxable year to which applies the election to receive such distribution, at least 80 percent of the amount of a minimum distribution (from the earnings and profits to which the election for such year relates) which if made during such period would have satisfied the conditions for the section 963 exclusion for such year. If less than 80 percent of the amount of a minimum distribution is received during such period, the existence of reasonable cause for failure to receive a minimum distribution must be established by clear and convincing evidence. For determination of a distribution period with respect to a United States shareholder see paragraph (a) (6) of § 1.963-1.

(c) *Nature and details of determination.* (1) A determination that the section 963 exclusion does not apply to a United States shareholder for a taxable year due to its failure to receive a minimum distribution for such year shall, for the purposes of this section, be established by—

(i) A decision by the Tax Court or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(ii) A closing agreement made under section 7121; or,

(iii) An agreement which is signed by the district director, or such other official to whom authority to sign the agreement is delegated, and by, or on behalf of, such shareholder and which relates to the liability of such shareholder for the tax under chapter 1 of the Code for such year.

(2) The date of determination by a decision of the Tax Court shall be the date upon which such decision becomes final, as prescribed in section 7481.

(3) The date upon which a judgment of a court becomes final shall be determined upon the basis of the facts in the particular case. Ordinarily, a judgment of a United States district court shall become final upon the expiration of the time allowed for taking an appeal, if no such appeal is duly taken within such time; and a judgment of the United States Court of Claims shall become final upon the expiration of the time allowed for filing a petition for certiorari, if no such petition is duly filed within such time.

(4) The date of determination by a closing agreement made under section 7121 shall be the date such agreement is approved by the Commissioner.

(5) The date of a determination made by an agreement which is signed by the district director, or such other official to whom authority to sign the agreement is delegated, shall be the date prescribed by this subparagraph. The agreement shall be sent to the United States shareholder at his last known address by either registered or certified mail. If registered mail is used for such purpose, the date of registration shall be treated as the date of determination; if certified mail is used for such purpose, the date of the postmark on the sender's receipt for such mail shall be treated as the date of determination. However, if the deficiency distribution is received by such shareholder before such registration or postmark date but on or after the date the agreement is signed by the district director or such other official to whom authority to sign the agreement is delegated, the date of determination shall be the date on which the agreement is so signed.

(6) The determination under this paragraph shall set forth the total amount of tax (computed without benefit of the exclusion under section 963) under chapter 1 of the Code for which the United States shareholder is liable for the taxable year and find that, due to such shareholder's failure to receive a minimum distribution, the section 963 exclusion does not apply for such year with respect to stock to which the election under such section relates.

(d) *Claim for treatment of distribution as a deficiency distribution.* A claim for treatment of a deficiency distribution as counting toward a minimum distribution for the year of election shall be filed in duplicate, within 120 days after the date of the determination described in paragraph (c) of this section, with the requisite declaration prescribed by the

Commissioner on the appropriate claim form and shall be accompanied by—

(1) A copy of such determination and a description of how it became final;

(2) An accounting for the earnings and profits of each foreign corporation, from which any portion of such deficiency distribution is received, for the taxable year in respect of which the election was made;

(3) If the election was with respect to a chain or group, an accounting for the earnings and profits for the taxable year, of each corporation in such chain or group and in a chain of ownership described in section 958(a), through which the deficiency distribution passes;

(4) If requested by the district director, or by such other official to whom authority to sign the agreement referred to in paragraph (c) (1) of this section is delegated, a consent by the United States shareholder under section 6501 to extend the period for the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of a deficiency and all interest, additional amounts, and assessable penalties; and

(5) Such other information as may be required by the claim form or the district director, or other official, in support of the claim.

(e) *Computation of interest on deficiencies in tax.* (1) Where a deficiency in tax for any taxable year is caused by reason of the inclusion in gross income of a United States shareholder of subpart F income because of failure by such shareholder to receive a minimum distribution for such year, interest is to be computed on such deficiency for the period from the last date prescribed for payment of the tax for such year to the date of filing the claim under paragraph (d) of this section.

(2) Interest is also to be computed, on any additional tax due by reason of the receipt by the United States shareholder of the deficiency distribution itself, for the period from the date of filing of the claim under paragraph (d) of this section to the date such additional tax is paid.

(f) *Claim for credit or refund.* If a deficiency in tax is asserted for any taxable year by reason of failure to include subpart F income in gross income under section 951(a) (1) (A) (i) and the United States shareholder has paid any portion of such asserted deficiency, such shareholder is entitled to a credit or refund of such payment to the extent that such payment constitutes an overpayment of tax as the result of a deficiency distribution allowed under this section. To secure credit or refund of such overpayment, the United States shareholder must file a claim on Form 843 in addition to the claim form required under paragraph (d) of this section. No interest shall be allowed on such credit or refund.

(g) *Effect of deficiency distribution—*

(1) *Allocation of distributions.* The deficiency distribution shall be allowed as of the date the claim under paragraph (d) of this section is filed and shall be allocated, by applying the rules of

§ 1.963-5, as a distribution first from the earnings and profits (to the extent thereof) of the foreign corporation which was the single first-tier corporation, or of the distributing corporation or corporations which were in the chain or group, as the case may be, for the taxable year in respect of which the election was made, and then from earnings and profits (to the extent thereof) described in section 959(c) (3) and determined as provided in section 959 for the most recent taxable year and the first, second, etc., taxable years preceding such recent taxable year, in that order, of the distributing corporation or corporations. In applying the preceding sentence to taxable years other than the taxable year in respect of which the election was made, the deficiency distribution shall first be allocated, in the order of allocation prescribed by such sentence, first to taxable years in respect of which no election under section 963 was made with respect to the stock on which such distribution is received and then to taxable years in respect of which an election under such section was made.

(2) *Year of receipt.* Any deficiency distribution made with respect to a taxable year of the United States shareholder shall be treated as having been received by such United States shareholder in that year for which such shareholder elected to receive a minimum distribution under section 963; and, for purposes of the foreign tax credit under section 901, the foreign income taxes paid or accrued, or deemed paid, by the United States shareholder by reason of a distribution of any amount treated as a deficiency distribution for such year shall be treated as paid or accrued, or deemed paid, for such year.

(3) *Year of payment.* A distribution counting toward a deficiency distribution for a taxable year of election shall be treated for purposes of applying paragraph (c) of § 1.963-5, relating to rules for distributing through a chain or group, as if it were distributed during the distribution period (as defined in paragraph (f) of § 1.963-5) with respect to the distributing corporation and each foreign corporation through which such distribution is made to the United States shareholder, for the taxable year to which such election applies; and the foreign income taxes paid by any foreign corporation by reason of such distribution shall, in the application of section 902 and paragraph (b) (1) (ii) of § 1.963-7, be treated as paid or accrued by such foreign corporation for its taxable year to which such election applies.

(4) *Allocation of reduction in tax credit.* If any portion of a deficiency distribution from a corporation which was in a chain or group is paid from earnings and profits of a taxable year other than that in respect of which the election was made, then the minimum distribution toward which such deficiency distribution counts will be treated as a non pro rata minimum distribution for purposes of applying paragraph (c) (1) of § 1.963-7, relating to the reduction and deferral of foreign tax credit. If there is a reduction in foreign tax credit under such paragraph of § 1.963-7 with respect to any distribution

counting toward a deficiency distribution and such distribution is allocated under this paragraph to the earnings and profits of the distributing corporation or corporations for a taxable year other than that to which the election applies, the reduction in credit shall be allocated to the remaining earnings and profits of such other taxable year of such of the distributing corporations as are first-tier or second-tier corporations under section 902 with respect to the United States shareholder.

§ 1.963-9 Illustrations of computation of minimum distribution.

(a) *Minimum distribution by single first-tier corporation.* The application of the first-tier election of the section 963 exclusion by a United States shareholder may be illustrated by the following examples in which the surtax exemption provided by section 11(c) is disregarded:

Example (1). Domestic corporation M directly owns throughout 1963, 60 percent of the one class of stock of controlled foreign corporation A, not a less developed country corporation under section 902(d), which has for 1963 earnings and profits of \$70 (all of which is attributable to subpart F income) after having paid for such year foreign income tax of \$30. Both corporations use the calendar year as the taxable year. Corporation A is created under the laws of a foreign country which imposes a 6-percent dividend withholding tax. Corporation M would be required, but for section 963, to include \$42 (its proportionate share, 60 percent of \$70) of A Corporation's subpart F income in gross income under section 951(a) (1) (A) (i). For 1963, however, M Corporation makes a first-tier election with respect to A Corporation. The effective foreign tax rate applicable to A Corporation for 1963 is 30 percent, the percentage which such \$30 of foreign tax is of \$100 (the sum of \$30 plus \$70). Under the table set forth in section 963(b), M Corporation must receive

for 1963 as a minimum distribution from A Corporation the distribution M Corporation will receive if A Corporation distributes 75 percent of its earnings and profits for 1963. Thus, if M Corporation receives a distribution of \$31.50, its proportionate share, or 60 percent, of 75 percent of A Corporation's \$70 of earnings and profits, it may exclude from gross income \$42 otherwise required to be included in gross income under section 951(a) (1) (A) (i) and will compute its income tax, assuming no other income, as follows:

Dividend	\$31.50
Gross-up under sec. 78 (\$31.50/\$70 × \$30)	13.50
Taxable income	45.00
U.S. tax before foreign tax credit (\$45 × 0.52)	23.40
Foreign tax credit (\$13.50 plus 6 percent of \$31.50)	15.39
U.S. tax payable	8.01

Example (2). (1) All the income of controlled foreign corporation B, wholly owned directly by domestic corporation M, is taxed by foreign country Y, the tax laws of which impose at the local level a corporate income tax of 10 percent of earnings and profits (before reduction for income taxes) and, at the national level, an income tax of 30 percent of such earnings and profits reduced by the local tax and any profits which are distributed. Also, at the national level, a tax of 20 percent is imposed on B Corporation on the dividends which are made for the taxable year. Both corporations use the calendar year as the taxable year. For 1963, B Corporation has earnings and profits (before reduction by income taxes) of \$100. B Corporation is not a less developed country corporation under section 902(d). For 1963, M Corporation makes a first-tier election with respect to B Corporation and receives a minimum distribution. Corporation B has no 1964 earnings and profits and its remaining 1963 earnings and profits are distributed late in 1964. The minimum distribution required to be received by M Corporation for 1963 and the United States tax with respect to the 1963 earnings and profits of B Corporation are computed as follows:

1963	
Effective foreign tax rate which obtains if no earnings and profits of B Corporation are distributed $[(\$100 \times 0.10) + \{(\$100 - \$100 \times 0.10) \times 0.30\}]$	37%
Minimum percentage of earnings and profits required under sec. 963(b) to be distributed, given a 37 percent effective foreign tax rate	68%
Amount of earnings and profits (before reduction by foreign income tax) to which minimum distribution would be attributable if the effective foreign tax rate of 37 percent obtained $(0.68 \times \$100)$	\$68.00
Minimum distribution required to be received by M Corporation, i.e., such an amount that is \$68 less the foreign income tax on such \$68, determined by letting "d" equal the dividend in the algebraic equation: $d = \$68 - (0.10 \times \$68) - 0.30(\$68 - [0.10 \times \$68] - d) - 0.20d$ $d = \$68 - \$6.80 - (\$20.40 - \$2.04 - 0.30d) - 0.20d$ $d = \$61.20 - \$20.40 + \$2.04 + 0.30d - 0.20d$ $d = \$42.84 + 0.10d$ $0.90d = \$42.84$ $d = \$42.84/0.90$, or	47.60
Gross-up under sec. 78, using the actual foreign income tax imposed on pretax profits to which are attributable the earnings and profits distributed $(\$6.80 + 0.30[\$61.20 - \$47.60] + 0.20[\$47.60])$	20.40
Taxable income of M Corporation for 1963 $(\$47.60 + \$20.40)$	68.00
U.S. tax before foreign tax credit $(\$68 \times 0.52)$	35.36
Foreign tax credit $(\$47.60/\$47.60 \times \$20.40)$	20.40
U.S. tax payable for 1963 $(\$35.36 - \$20.40)$	14.96
Overall U.S. and foreign income tax rate $[\$14.96 + \$20.40 + (\$32 \times 0.37)]$	47.20%
1964	
Dividend received by M Corporation $(\$32 - [0.37 \times \$32])$	\$20.16
Gross-up under sec. 78, using the foreign income tax paid or accrued on pretax earnings and profits to which are attributable 1963 earnings and profits distributed during 1964 $(\$20.16/\$20.16 \times [\$32 \times 0.37])$	11.84
Taxable income of M Corporation for 1964 $(\$20.16 + \$11.84)$	32.00
U.S. tax before foreign tax credit $(\$32 \times 0.52)$	16.64
Foreign tax credit $(\$20.16/\$20.16 \times \$11.84)$	11.84
U.S. tax payable $(\$16.64 - \$11.84)$	4.80

1963—Continued

Determination of whether the overall U.S. and foreign income tax on the actual distribution is equal to, or exceeds, the lesser of \$32.21 and \$31.69:

Amount received by N Corporation after reduction by further foreign income tax imposed on distributions through the chain:

No further foreign tax.....

No further foreign tax.....

B Corporation tax (\$9.60—[0.40×\$9.60]) or (\$9.60—\$3.84).....

Gross-up under sec. 78:

(\$9.36/\$16.20×\$1.80).....

(\$21.60/\$21.60×\$1.40).....

(\$5.76/\$5.76×\$3.84).....

Taxable income of N Corporation for 1963 attributable to actual distribution (\$36.72+\$19.28).....

U.S. tax before foreign tax credit (\$56×0.52).....

Tentative foreign tax credit (as determined under gross-up).....

Tentative U.S. tax payable (\$29.12—\$19.28).....

Overall U.S. and foreign income tax (\$9.84+\$1.80+\$1.40+\$3.84+\$1.30).....

Insufficient overall tax (\$31.69 [i.e., 0.91×0.52×\$66.96]—\$31.18).....

Reduced foreign tax credit (\$19.28—\$0.51).....

U.S. tax payable for 1963 (\$29.12—\$18.77).....

Overall U.S. and foreign income tax (\$10.35+\$1.80+\$1.40+\$3.84+\$1.30).....

Allocation of reduction in foreign tax credit to undistributed consolidated 1963 earnings and profits of A and B Corporations to be deemed paid by N Corporation in future years:

Reduction in foreign tax credit (\$19.28—\$18.77).....

Undistributed 1963 consolidated earnings and profits of the chain:

(\$16.20—\$9.36).....

(\$21.60—\$21.60).....

Allocation of reduction:

(\$11.66—\$9.60).....

(\$6.84/\$6.84×\$0.51).....

1964

Distribution from remaining 1963 consolidated earnings and profits of the chain:

(\$16.20—\$9.36).....

(\$21.60—\$21.60).....

(\$11.66—\$9.60).....

Such amounts as reduced by further foreign income tax imposed on distributions through the chain:

No further foreign tax.....

B Corporation tax (\$2.06—[0.40×\$2.06]) or (\$2.06—\$0.82).....

Foreign income tax for 1963 to be taken into account in determining tax deemed paid for 1964 under sec. 902:

(\$1.80—\$1.04).....

(\$14.40—\$14.40).....

Gross-up under sec. 78:

(\$6.84/\$6.84×\$0.76).....

(\$1.24/\$1.24×\$0.82).....

Taxable income of N Corporation for 1964 attributable to 1964 distribution (\$8.08+\$1.58).....

U.S. tax before foreign tax credit (\$9.66×0.52).....

Foreign tax credit:

Deferred credit:

(\$6.84/\$6.84×\$0.51).....

Other tax deemed paid under sec. 902 (computed under gross-up above).....

U.S. tax payable for 1964 (\$5.02—[0.51+\$1.58]).....

Example (1). Domestic corporation N throughout 1963 directly owns all the one class of stock of each of controlled foreign corporations A, C, and D; A Corporation directly owns all the one class of stock of controlled foreign corporation B. All such corporations use the calendar year as the taxable year. None of the foreign corporations is a less developed country corporation under section 902(d) for 1963. In computing its tax, A Corporation is not allowed any deduction from income for dividends received from B Corporation. For 1963, N Corporation makes a group election with respect to A, B, C, and D Corporations and receives a pro rata minimum distribution from the 1963 consolidated earnings and profits of the group; the remainder of the 1963 earnings and profits of corporations A, B, C, and D is distributed for 1964. None of the foreign corporations in the group has earnings and profits for 1964 other than the dividends received by A Corporation from B Corporation. The overall limitation under section 904(a)(2) on the foreign tax credit applies for both years. The United States and foreign income taxes with respect to such 1963 earnings and profits are as follows, based upon the facts presented.

1963

A B C D Total

Pretax and predistribution consolidated earnings and profits (and deficits) of the group.....

Foreign income tax (10%, 50%, and 30%, respectively).....

Consolidated earnings and profits before allocation of deficits.....

Allocation of deficit of D Corporation:

(\$22.50/\$70×\$20).....

(\$12.50/\$70×\$20).....

(\$35/\$70×\$20).....

Consolidated earnings and profits of the group for 1963.....

Effective foreign tax rate applicable to the group (\$30/\$80).....

Minimum percentage prescribed by section 963(b) for 1963.....

Pro rata minimum distribution for 1963:

(0.68×\$16.07).....

(0.68×\$8.93).....

(0.68×\$25).....

Such amount as reduced by further foreign income tax of A Corporation on B Corporation's distribution:

No further foreign tax.....

A Corporation's tax (\$6.07—[0.10×\$6.07]) or (\$6.07—\$0.61).....

No further foreign tax.....

Gross-up under sec. 78:

(\$10.93/\$16.07×\$2.50).....

(\$6.07/\$8.93×\$12.50) + [\$5.46/\$5.46×\$0.61] or (\$8.50+\$0.61).....

Taxable income of N Corporation for 1963 (\$33.39+\$21.01).....

U.S. tax before foreign tax credit (0.52×\$54.40).....

Foreign tax credit (as computed under the gross-up above).....

U.S. tax payable for 1963 (\$28.29—\$21.01).....

Overall U.S. and foreign income tax (\$7.28+\$30+\$0.61).....

Earnings and profits for 1963 to which minimum distribution for such year was not attributable:

(\$22.50—\$10.93).....

(\$12.50—\$6.07).....

(\$35.00—\$17.00).....

Foreign income tax for 1963 not taken into account in determining tax deemed paid for such year on pretax earnings and profits to which the minimum distribution for such year was attributable:

(\$16.07—\$10.93)/\$16.07×\$2.50).....

(\$8.93—\$6.07)/\$8.93×\$12.50).....

(\$25—\$17)/\$25×\$15).....

Additional foreign income tax on A Corporation's 1964 earnings and profits attributable to distribution from B Corporation for such year (\$6.43×0.10).....

(c) Minimum distribution by group. The application of the group election of the section 963 exclusion for a taxable year by a United States shareholder may be illustrated by the following examples in which the surtax exemption under section 11(c) is disregarded:

	A	B	C	Branch	Total
Reduced foreign tax credit (\$25-\$3)					\$22.00
U.S. tax payable (\$26-\$22)					4.00
Overall U.S. and foreign income tax (\$4+\$42)					46.00
Reduction in foreign tax credit for 1963 (\$25-\$22)					3.00
Allocation of reduction in foreign tax credit to undistributed 1963 consolidated earnings and profits of the group:					
(\$18/(\$18+\$15) × \$3.00)	\$1.64				
(\$15/(\$18+\$15) × \$3.00)		\$1.36			3.00

Example (3). Domestic group M, an affiliated group of domestic corporations filing a consolidated return under section 1501, makes a group election for 1963 with respect to a group consisting of two controlled foreign corporations C and D, all of whose one class of stock is directly owned by group M, and foreign branch B, a foreign branch of a Western Hemisphere trade corporation (as defined in section 921) included in group M. No distributions are received for the taxable year from C and D Corporations, but the foreign group makes a non pro rata minimum distribution by reason of the deemed distribution of all of branch B's earnings and profits. For 1963, the overall limitation under section 904(a) (2) on the foreign tax credit applies. All corporations use the calendar year as the taxable year. None of the foreign corporations is a less developed country corporation under section 902(d) for 1963. The income, and the United States and foreign income tax for 1963, are determined as follows:

	Branch	C	D	Total
Pretax and predistribution consolidated earnings and profits of the foreign group (before Western Hemisphere trade corporation deduction)	\$100.00	\$10.00	\$10.00	\$120.00
Western Hemisphere trade corporation deduction (\$100 × 0.14/0.52)	26.92			26.92
Pretax and predistribution consolidated earnings and profits of the foreign group (after Western Hemisphere trade corporation deduction)	73.08	10.00	10.00	93.08
Foreign income tax (38%, 20%, and zero rate, respectively):				
(0.38 × \$100)	38.00			
(0.20 × \$10)		2.00		40.00
Consolidated earnings and profits of the foreign group—Effective foreign tax rate (\$40/\$93.08)	35.08	8.00	10.00	53.08
Minimum percentage prescribed by section 963(b)				43%
Tax which would be paid on a pro rata minimum distribution from consolidated earnings and profits of the foreign group:				40%
Pro rata minimum distribution:				
(0.40 × \$73.08)	29.23			
(0.40 × \$8.00)		3.20		36.43
Gross-up under sec. 78: (0.40 × \$2)		.80	4.00	80
Taxable income of group M	29.23	4.00	4.00	37.23
U.S. tax before foreign tax credit:				
(0.52 × \$29.23)	15.20			
(0.54 × \$4.00)		2.16		19.52
(0.54 × \$4.00)			2.16	16.00
Foreign tax credit (\$0.80, as computed under the gross-up above, plus 40 percent of \$38)	15.20	.80		3.52
U.S. tax payable		1.36	2.16	43.52
Overall U.S. and foreign income tax (\$3.52+\$40)				73.08
Tentative tax on non pro rata minimum distribution actually received by group M (taxable income of branch				38.00
U.S. tax before foreign tax credit (0.52 × \$73.08)	73.08			38.00
Tentative foreign tax credit				0
Tentative U.S. tax payable				38.00
Insufficient overall U.S. and foreign income tax (the lesser of \$43.52 or \$44.04)				3.52
[0.91 × 0.52 × \$93.08] minus \$40				34.48
Reduced foreign tax credit (\$38-\$3.52)				

	A	B	C	Branch	Total
Dividend received in 1964 by N Corporation from the group (\$36-\$0.64)					\$35.36
Gross-up under sec. 78:					
(\$11.57/\$11.57 × \$0.80)	\$0.80				
(\$15.79/\$5.79 × \$0.64) + [\$6.43/\$6.43 × \$4.00]		\$4.64			10.24
Taxable income of N Corporation for 1964 (\$35.36+\$10.24)				\$4.80	45.60
U.S. tax before foreign tax credit (0.52 × \$45.60)					23.71
Foreign tax credit (as computed under the gross-up above)					10.24
U.S. tax payable for 1964 (\$23.71-\$10.24)					13.47

Example (2). Throughout 1963, domestic corporation N directly owns all the one class of stock of controlled foreign corporations A, B, and C, and maintains in a foreign country a branch which qualifies for inclusion in a group as a wholly owned foreign subsidiary corporation. For 1963, a year for which the overall limitation under section 904(a) (2) on the foreign tax credit applies, N Corporation makes a group election with respect to A, B, and C Corporations and the foreign branch. All such corporations use the calendar year as the taxable year. The foreign branch, if it were treated as a foreign corporation, would have pretax and predistribution earnings and profits of \$40 for 1963. None of the foreign corporations is a less developed country corporation under section 902(d) for 1963. The income and the United States and foreign income tax for 1963 of such corporations are as follows:

	A	B	C	Branch	Total
Pretax and predistribution consolidated earnings and profits of the group	\$20.00	\$30.00	\$10.00	\$40.00	\$100.00
Foreign income tax (10%, 50%, 50%, and 50%, respectively)	2.00	15.00	5.00	20.00	42.00
Effective foreign tax rate applicable to the group (\$42/\$100)					42%
Minimum percentage prescribed by sec. 963(b)					40%
Posttax and predistribution consolidated earnings and profits of the group	18.00	15.00	5.00	20.00	58.00
Tax which would be paid on a pro rata minimum distribution from consolidated earnings and profits of the group:					
Pro rata minimum distribution (and amount which would be received by N Corporation):					
(0.40 × \$18)	7.20				
(0.40 × \$15)		6.00			
(0.40 × \$5)			2.00		31.20
(0.40 × \$40)				16.00	
Gross-up under sec. 78:					
(\$7.20/\$18 × \$2)	.80				
(\$6/\$15 × \$5)		6.00			8.80
(\$2/\$5 × \$5)			2.00		40.00
Taxable income of N Corporation (\$31.20+\$8.80)					20.80
U.S. tax before foreign tax credit (0.52 × \$40)					16.80
Foreign tax credit (\$8.80, as computed under the gross-up, plus 40 percent of \$20)					4.00
U.S. tax payable (\$20.80-\$16.80)					46.00
Overall U.S. and foreign income tax on a pro rata minimum distribution actually received by N Corporation:					
Tentative tax on non pro rata minimum distribution:					
Actual distribution received					45.00
Gross-up under sec. 78 (\$5/\$5 × \$5)			\$5.00	\$40.00	5.00
Taxable income of N Corporation (\$45+\$5)			5.00		50.00
U.S. tax before foreign tax credit (0.52 × \$50)					26.00
Tentative foreign tax credit (\$5, as computed under the gross-up above, plus 50 percent of \$40)					25.00
Tentative U.S. tax payable (\$26-\$25)					1.00
Insufficient overall U.S. and foreign income tax (the lesser of \$46 or \$47.32)					3.00
[0.91 × 0.52 × \$100] minus \$43 [\$1+\$42]					

	Branch	C	D	Total
U.S. tax payable (\$38-\$34.48)-----				\$3.52
Overall U.S. and foreign income tax (\$3.52+\$40.00)-----				43.52
Reduction in foreign tax credit for 1963 (\$38-\$34.48)-----				3.52
Allocation of reduction in foreign tax credit to 1963 undistributed earnings and profits of the foreign group:				
(\$8/[\$8+\$10]×\$3.52)-----		\$1.56		
(\$10/[\$8+\$10]×\$3.52)-----			\$1.96	3.52

[F.R. Doc. 63-13067; Filed, Dec. 19, 1963; 8:45 a.m.]

[26 CFR Part 1]

INCOME TAX

Export Trade Corporations; Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington, D.C., 20224, within the period of 45 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 45-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] MORTIMER M. CAPLIN,
Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) to sections 970 and 971 of the Internal Revenue Code of 1954, as added by section 12(a) of the Revenue Act of 1962 (76 Stat. 1006), such regulations are amended to include the following new sections, effective with respect to taxable years of foreign corporations beginning after December 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end:

§ 1.970 Statutory provisions; reduction of subpart F income of export trade corporations.

Sec. 970. *Reduction of subpart F income of export trade corporations.*—(a) *Export trade income constituting foreign base company income.*—(1) *In general.* In the case of a controlled foreign corporation (as defined in section 957) which for the taxable year is an export trade corporation, the subpart F income (determined without regard to this subpart) of such corporation for such year shall be reduced by an amount equal to so much of the export trade income (as defined in section 971(b)) of such corporation for such year as constitutes foreign base

company income (as defined in section 954), but only to the extent that such amount does not exceed whichever of the following amounts is the lesser:

(A) An amount equal to 1½ times so much of the export promotion expenses (as defined in section 971(d)) of such corporation for such year as is properly allocable to the export trade income which constitutes foreign base company income of such corporation for such year, or

(B) An amount equal to 10 percent of so much of the gross receipts for such year (or, in the case of gross receipts arising from commissions, fees, or other compensation for its services, so much of the gross amount upon the basis of which such commissions, fees, or other compensation is computed) accruing to such export trade corporation from the sale, installation, operation, maintenance, or use of property in respect of which such corporation derives export trade income as is properly allocable to the export trade income which constitutes foreign base company income of such corporation for such year. The allocations with respect to export trade income which constitutes foreign base company income under subparagraphs (A) and (B) shall be made under regulations prescribed by the Secretary or his delegate.

(2) *Overall limitation.* The reduction under paragraph (1) for any taxable year shall not exceed an amount which bears the same ratio to the increase in the investments in export trade assets (as defined in section 971(c)) of such corporation for such year as the export trade income which constitutes foreign base company income of such corporation for such year bears to the entire export trade income of such corporation for such year.

(b) *Inclusion of certain previously excluded amounts.* Each United States shareholder of a controlled foreign corporation which for any prior taxable year was an export trade corporation shall include in his gross income under section 951(a)(1)(A)(ii), as an amount to which section 955 (relating to withdrawal of previously excluded subpart F income from qualified investment) applies, his pro rata share of the amount of decrease in the investments in export trade assets of such corporation for such year, but only to the extent that his pro rata share of such amount does not exceed an amount equal to—

(1) His pro rata share of the sum of (A) the amounts by which the subpart F income of such corporation was reduced for all prior taxable years under subsection (a), and (B) the amounts not included in subpart F income (determined without regard to this subpart) for all prior taxable years by reason of the application of section 972, reduced by

(2) The sum of the amounts which were included in his gross income under section 951(a)(1)(A)(ii) under the provisions of this subsection for all prior taxable years.

(c) *Investments in export trade assets.*—

(1) *Amount of investments.* For purposes of this section, the amount taken into account with respect to any export trade asset shall be its adjusted basis, reduced by any liability to which the asset is subject.

(2) *Increase in investments in export trade assets.* For purposes of subsection (a), the amount of increase in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) The amount of such investments at the close of the taxable year, exceeds

(B) The amount of such investments at the close of the preceding taxable year.

(3) *Decrease in investments in export trade assets.* For purposes of subsection (b), the amount of decrease in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) The amount of such investments at the close of the preceding taxable year (reduced by an amount equal to the amount of net loss sustained during the taxable year with respect to export trade assets), exceeds

(B) The amount of such investments at the close of the taxable year.

(4) *Special rule.* A United States shareholder of an export trade corporation may, under regulations prescribed by the Secretary or his delegate, make the determinations under paragraphs (2) and (3) as of the close of the 75th day after the close of the years referred to in such paragraphs in lieu of on the last day of such years. A United States shareholder of an export trade corporation may, under regulations prescribed by the Secretary or his delegate, make the determinations under paragraphs (2) and (3) with respect to export trade assets described in section 971(c)(3) as of the close of the years following the years referred to in such paragraphs, or as of the close of such longer period of time as such regulations may permit, in lieu of on the last day of such years and in lieu of on the day prescribed in the preceding sentence. Any election under this paragraph made with respect to any taxable year shall apply to such year and to all succeeding taxable years unless the Secretary or his delegate consents to the revocation of such election.

[Sec. 970 as added by sec. 12(a), Rev. Act 1962 (76 Stat. 1006).]

§ 1.970-1 Export trade corporations.

(a) *In general.* Sections 970 through 972 provide in general that if a controlled foreign corporation is an export trade corporation for any taxable year, the subpart F income of such corporation shall, subject to limitations provided by section 970(a) and paragraph (b) of this section, be reduced by so much of such corporation's export trade income as constitutes foreign base company income. To the extent subpart F income of an export trade corporation is reduced under section 970 and this section, an amount is required by section 970(b) and paragraph (c) of this section to be included in gross income of United States shareholders of the corporation if there is a subsequent decrease in such corporation's investments in export trade assets. See section 971(a) and paragraph (a) of § 1.971-1 for definition of the term "export trade corporation", section 971(b) and paragraph (b) of § 1.971-1 for definition of the term "export trade income", and section 971(c) and paragraph (c) of § 1.971-1 for definition of the term "export trade assets".

(b) *Amount by which export trade income shall reduce subpart F income.*—(1) *Deductible amount.* The subpart F income, determined as provided in section 952 and the regulations thereunder but without regard to section 970 and this paragraph, of a controlled foreign corpo-

ration which is an export trade corporation for its taxable year shall be reduced by an amount equal to so much of its export trade income as constitutes foreign base company income for such taxable year, but only to the extent that such amount of export trade income does not exceed the limitation determined under subparagraph (2) of this paragraph for such taxable year. See section 972 and § 1.972-1 for rules relating to the consolidation of export trade corporations for purposes of determining the limitations described in subparagraph (2) of this paragraph.

(2) *Limitation on the amount of export trade income deductible from subpart F income.* The amount by which subpart F income of an export trade corporation may be reduced for any taxable year under subparagraph (1) of this paragraph may not exceed whichever of the following limitations is the smallest:

(i) The amount which is equal to 150 percent of the export promotion expenses, as defined in section 971(d) and paragraph (d) of § 1.971-1, of the export trade corporation paid or incurred during the taxable year which are properly allocable to the receipt or the production of so much of its export trade income as constitutes foreign base company income for such taxable year;

(ii) The amount which is equal to 10 percent of the gross receipts (other than from commissions, fees, or other compensation for services), plus 10 percent of the gross amount upon the basis of which are computed commissions, fees, or other compensation for services included in gross receipts, of the export trade corporation received or accrued during the taxable year from, or in connection with, the sale, installation, operation, maintenance, or use of property in respect of which such corporation derives export trade income which constitutes foreign base company income for such taxable year; or

(iii) The amount which bears the same ratio to the increase in investments in export trade assets, as defined in section 970(c) (2) and paragraph (d) (2) of this section, of the export trade corporation for its taxable year as the export trade income which constitutes foreign base company income of such corporation for such taxable year bears to the entire export trade income of the corporation for such year.

All determination of limitations under this subparagraph shall be made on an aggregate basis and not with respect to separate items or categories of income described in paragraph (b) (1) of § 1.971-1.

(3) *Determination of export promotion expense limitation.* For purposes of determining the limitation contained in subparagraph (2) (i) of this paragraph for any taxable year of the export trade corporation, there shall be taken into account with respect to those items or categories of export trade income which constitute foreign base company income the entire amount of those export promotion expenses which are directly related to such items or categories of income and a ratable part of any other export promotion expenses which

are indirectly related to such items or categories of income, except that no export promotion expense shall be allocated to an item or category of income to which it clearly does not apply and no deduction allowable to such corporation under section 882(c) and § 1.882-3 shall be taken into account.

(4) *Application of section 482.* The limitations provided in section 970(a) and subparagraph (2) of this paragraph shall not affect the authority of the district director to apply the provisions of section 482 and the regulations thereunder, relating to allocation of income and deductions among taxpayers.

(5) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). Foreign corporation A is a wholly owned subsidiary of domestic corporation M. Both corporations use the calendar year as the taxable year. For 1963, A Corporation's subpart F income determined under section 952 and the regulations thereunder is \$35, the total of its gross receipts and gross amounts referred to in subparagraph (2) (ii) of this paragraph is \$310, its export promotion expenses properly allocable to its export trade income which constitutes foreign base company income are \$18, its increase in investments in export trade assets is \$32, and its export trade income is \$40, of which \$30 constitutes foreign base company income and \$10 does not constitute foreign base company income. The subpart F income of A Corporation for 1963 as reduced under section 970(a) is \$11, determined as follows:

(i) Subpart F income	-----	\$35	
(ii) Less: \$30 export trade income which constitutes foreign base company income, but deduction not to exceed the smallest of the following limitations (smallest of (a), (b), or (c)):			
(a) 150 percent of allocable export promotion expenses referred to in subparagraph (2) (i) of this paragraph (150% of \$18)	-----	\$27	
(b) 10 percent of gross receipts and gross amounts referred to in subparagraph (2) (ii) of this paragraph (10% of \$310)	-----	31	
(c) Amount which bears to the increase in investments in export trade assets (\$32) the same ratio as the export trade income which constitutes foreign base company income (\$30) bears to total export trade income (\$40) (75% [\$30/\$40] of \$32)	-----	24	24
(iii) Subpart F income as reduced under sec. 970(a)	-----	11	

Example (2). The facts are the same as in example (1), except that A Corporation's export promotion expenses properly allocable to export trade income which constitutes foreign base company income are \$14 instead of \$18. The applicable limitation on the amount deductible from A Corporation's subpart F income for 1963 is \$21 (150% of \$14) instead of \$27. The subpart F income as reduced under section 970(a) is \$14 (\$35 less \$21).

Example (3). The facts are the same as in example (1), except that the total amount of A Corporation's gross receipts and gross amounts referred to in subparagraph (2) (ii) of this paragraph is \$200 instead of \$310. The applicable limitation on the amount deductible from A Corporation's subpart F

income for 1963 is \$20 (10 percent of \$200 instead of \$24). The subpart F income as reduced under section 970(a) is \$15 (\$35 less \$20).

Example (4). The facts are the same as in example (1), except that A Corporation derives its export trade income which constitutes foreign base company income of \$30 in a service arrangement with M Corporation under which it receives as a fee 5 percent of the gross receipts from M Corporation's sales or a minimum fee of \$30. Such gross receipts are \$220. The gross amounts taken into account in determining the limitation under subparagraph (2) (ii) of this paragraph are \$220. The applicable limitation on the amount deductible from A Corporation's subpart F income for 1963 is \$22 (10 percent of \$220) instead of \$24. The subpart F income as reduced under section 970(a) is \$13 (\$35 minus \$22).

Example (5). The facts are the same as in example (1), except that A Corporation derives its export trade income which constitutes foreign base company income of \$30 in a service arrangement with M Corporation under which it receives as a fee 9 percent of the gross receipts from M Corporation's sales or a maximum fee of \$30. Such gross receipts are \$400. In such instance, the limitation under (ii) (b) of example (1) is \$40 (10 percent of \$400) instead of \$31. The applicable limitation on the amount deductible from A Corporation's subpart F income for 1963 is \$24, the smallest of the three limitations. The subpart F income as reduced under section 970(a) is \$11 (\$35 less \$24).

(c) *Withdrawal of previously excluded export trade income*—(1) *Inclusion of withdrawal in income of United States shareholders.* If—

(i) A controlled foreign corporation was an export trade corporation for any taxable year,

(ii) Such corporation in any such taxable year derived subpart F income which, under the provisions of section 970(a) and paragraph (b) of this section, was reduced, and

(iii) Such corporation has in a subsequent taxable year a decrease in investments in export trade assets,

every person who is a United States shareholder, as defined in section 951(b), of such corporation on the last day of such subsequent taxable year on which such corporation is a controlled foreign corporation shall include in his gross income, under section 951(a) (1) (A) (ii) and the regulations thereunder as an amount to which section 955 applies, his pro rata share of the amount of such decrease in investments but only to the extent that such pro rata share does not exceed the limitations determined under subparagraph (2) of this paragraph. A United States shareholder's pro rata share of a controlled foreign corporation's decrease for any taxable year in investments in export trade assets shall be his pro rata share of such corporation's decrease for such year determined under section 970(c) (3) and paragraph (d) (3) of this section.

(2) *Limitations applicable in determining amount includible in income*—

(i) *General.* A United States shareholder's pro rata share of a controlled foreign corporation's decrease in investments in export trade assets for any taxable year of such corporation shall, for purposes of determining an amount to be included in the gross income for any

taxable year of such shareholder, not exceeding the lesser of the limitations determined under (a) and (b) of this subdivision:

(a) Such shareholder's pro rata share of the sum of the controlled foreign corporation's earnings and profits (or deficit in earnings and profits) for the taxable year, computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year, plus his pro rata share of the sum of its earnings and profits (or deficits in earnings and profits) accumulated for prior taxable years beginning after December 31, 1962, or

(b) (1) Such shareholder's pro rata share of the sum of the amounts by which the subpart F income of such controlled foreign corporation for prior taxable years was reduced under section 970(a) and paragraph (b) of this section, plus

(2) Such shareholder's pro rata share of the sum of the amounts which were not included in the subpart F income of such controlled foreign corporation for such prior taxable years by reason of the application of section 972 and § 1.972-1, minus

(3) Such shareholder's pro rata share of the sum of the amounts which were previously included in his gross income for prior taxable years under section 951(a)(1)(A)(ii) by reason of the application of section 970(b) and this paragraph with respect to such controlled foreign corporation.

The net amount determined under (b) of this subdivision with respect to any stock owned by the United States shareholder shall be determined without taking into account any amount attributable to a period prior to the date on which such shareholder acquired such stock. See section 1248 and the regulations thereunder for rules governing the treatment of gain from sales or exchanges of stock in certain foreign corporations.

(ii) *Treatment of earnings and profits.* For purposes of determining earnings and profits of a controlled foreign corporation under subdivision (i) (a) of this subparagraph, such earnings and profits shall be considered not to include any amounts which are attributable to—

(a) Amounts which are, or have been, included in the gross income of a United States shareholder of such controlled foreign corporation under section 951(a)

(other than an amount included in the gross income of a United States shareholder under section 951(a)(1)(A)(ii) or section 951(a)(1)(B) for the taxable year) and have not been distributed, or

(b) Amounts described in section 959 which are, or have been, included in the gross income of a United States shareholder of another controlled foreign corporation under section 951(a) and which are distributed through a chain of ownership described in section 958(a) to the controlled foreign corporation with respect to which such determination is being made.

The rules of this subdivision apply only in determining the limitation on a United States shareholder's pro rata share of a controlled foreign corporation's decrease in investments in export trade assets. See section 959 and the regulations thereunder for limitations on the exclusion of previously taxed earnings and profits.

(iii) *Rules of application.* The determinations made under subdivision (i) of this subparagraph for purposes of determining the United States shareholder's pro rata share of a controlled foreign corporation's decrease in investments in export trade assets for any taxable year shall be made on the basis of the stock such shareholder owns, within the meaning of section 958(a) and the regulations thereunder, in the controlled foreign corporation on the last day in the taxable year on which such corporation is a controlled foreign corporation, even though such shareholder owned more or less stock in such corporation prior to that date. See section 972 and paragraph (b) (3) of § 1.972-1 for rules relating to the allocation of a decrease in investments in export trade assets of export trade corporations in a consolidated chain of such corporations. See section 951(a)(3) and the regulations thereunder for an additional limitation upon the amount of a United States shareholder's pro rata share determined under this paragraph.

(3) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). Foreign corporation A, which has one class of stock outstanding, is a wholly owned subsidiary of domestic corporation M throughout 1963 and 1964. Both corporations use the calendar year as the taxable year. For 1963, A Corporation qual-

ifies as an export trade corporation and its subpart F income, determined in accordance with the provisions of section 952 and the regulations thereunder, is reduced by \$20 under the provisions of section 970(a) and paragraph (b) of this section. Section 972 is assumed not to apply to A Corporation. For 1964, A Corporation has a decrease of \$8 in investments in export trade assets. For 1963 and 1964, A Corporation has earnings and profits of \$30 (determined under the provisions of subparagraph (2) of this paragraph). Corporation M's pro rata share of A Corporation's decrease in investments in export trade assets for 1964 which is included in M Corporation's gross income under section 951(a)(1)(A)(ii) by reason of the application of section 970(b) is \$8, determined as follows:

(i) Corporation M's pro rata share of A Corporation's decrease in investments in export trade assets for 1964 (100% of \$8) ----- \$8

(ii) Limitation on amount includible in gross income of M Corporation for 1964 (smaller of (a) or (b)):

(a) Corporation M's pro rata share of A Corporation's earnings and profits for 1963 and 1964 determined under subparagraph (2) of this paragraph (100% of \$30) ----- \$30

(b) Corporation M's pro rata share of amounts by which the subpart F income of A Corporation for 1963 was reduced under sec. 970(a) (100% of \$20) ----- \$20

Plus: Corporation M's pro rata share of amounts which were not included in subpart F income of A Corporation for 1963 by reason of the application of sec. 972 ----- 0

Total ----- \$20

Less: Corporation M's pro rata share of the sum of amounts which were previously included in gross income of M Corporation under sec. 951(a)(1)(A)(ii) by reason of the application of sec. 970(b) with respect to A Corporation ----- 0 20

(iii) Corporation M's pro rata share includible in gross income for 1964 under sec. 951(a)(1)(A)(ii) by reason of the application of sec. 970(b) (smaller of (i) or (ii)) ----- \$8

Example (2). Assume the same facts as in example (1), except that on February 14, 1965, M Corporation sells 25 percent of its stock in A Corporation to N Corporation. Corporation N is a domestic corporation which also uses the calendar year as a taxable year. For 1965, A Corporation has a decrease of \$16 in investments in export trade assets. Corporation A's earnings and profits for 1963 and 1964 (determined under the provisions of subparagraph (2) of this paragraph) are \$22 (\$30 minus \$8). Corporation A's earnings and profits for 1965 are \$6 (determined under the provisions of subparagraph (2) of this paragraph). For 1965, M Corporation's pro rata share of A Corporation's decrease in investments in export trade assets which is includible in M Corporation's gross income under section 951(a)(1)(A)(ii) is \$9, and N Corporation's pro rata share includible in gross income under such section is \$0, determined as follows:

M CORPORATION

(i) Corporation M's pro rata share of A Corporation's decrease in investments in export trade assets for 1965 (75% of \$16) ----- \$12

(ii) Limitation on amount includible in gross income of M Corporation for 1965 (smaller of (a) or (b)):

(a) Corporation M's pro rata share of A Corporation's earnings and profits for 1963, 1964, and 1965 determined under subparagraph (2) of this paragraph (75% of \$28) ----- \$21

(b) Corporation M's pro rata share of amounts by which the subpart F income of A Corporation for 1963 was reduced under sec. 970(a) (75% of \$20) ----- \$15

Plus: Corporation M's pro rata share of amounts which were not included in subpart F income of A Corporation for 1963 and 1964 by reason of the application of sec. 972 ----- 0

Total ----- \$15

Less: Corporation M's pro rata share of the sum of amounts which were previously included in gross income of M Corporation under sec. 951(a)(1)(A)(ii) by reason of the application of sec. 970(b) with respect to A Corporation (75% of \$8) ----- \$6

(ii) by reason of the application of sec. 970(b) with respect to A Corporation (75% of \$8) ----- \$9

- (iii) Corporation M's pro rata share includible in gross income for 1965 under sec. 951 (a) (1) (A) (ii) by reason of the application of sec. 970(b) (smaller of (i) or (ii)) ----- \$9

N CORPORATION

- (i) Corporation N's pro rata share of A Corporation's decrease in investments in export trade assets for 1965 (25% of \$16) ----- \$4

- (ii) Limitation on amount includible in gross income of N Corporation for 1965 (smaller of (a) or (b)):
- (a) Corporation N's pro rata share of A Corporation's earnings and profits for 1963, 1964, and 1965 determined under subparagraph (2) of this paragraph (25% of \$28) ----- \$7

- (b) Corporation N's pro rata share of amounts by which the subpart F income of A Corporation for 1963 was reduced under sec. 970(a) (amounts prior to 2/14/65 not being taken into account) ----- \$0

Plus: Corporation N's pro rata share of amounts which were not included in subpart F income of A Corporation for 1963 and 1964 by reason of the application of sec. 972 (amounts prior to 2/14/65 not being taken into account) ----- 0

Total ----- \$0

- Less: Corporation N's pro rata share of the sum of amounts which were previously included in gross income of N Corporation under sec. 951(a) (1) (A) (ii) by reason of the application of sec. 970(b) with respect to A Corporation (amounts prior to 2/14/65 not being taken into account) ----- \$0 \$0

- (iii) Corporation N's pro rata share includible in gross income for 1965 under sec. 951 (a) (1) (A) (ii) by reason of the application of sec. 970(b) (smaller of (i) or (ii)) ----- \$0

(d) *Investments in export trade assets*—(1) *Amount of investments.* For purposes of sections 970 through 972 and §§ 1.970-1 to 1.972-1, inclusive, export trade assets shall be taken into account on the following bases:

(i) *Working capital.* Working capital to which section 971(c) (1) applies shall be taken into account at the adjusted basis of current assets, determined as of the applicable determination date, less any current liabilities (except as provided in subdivision (iii) of this subparagraph).

(ii) *Other export trade assets.* Inventory to which section 971(c) (2) applies, facilities to which section 971(c) (3) applies, and evidences of indebtedness to which section 971(c) (4) applies, shall be taken into account at their adjusted bases as of the applicable determination date, reduced by any liabilities (except as provided in subdivision (iii) of this subparagraph) to which such

property is subject on such date. To be taken into account under this subparagraph, a liability must constitute a specific charge against the property involved. Thus, a liability evidenced by an open account or a liability secured only by the general credit of the controlled foreign corporation will not be taken into account. On the other hand, if a liability constitutes a specific charge against several items of property and cannot definitely be allocated to any single item of property, the liability shall be apportioned against each of such items of property in that ratio which the adjusted basis of such item on the applicable determination date bears to the adjusted basis of all such items on such date. A liability in excess of the adjusted basis of the property which is subject to such liability will not be taken into account for the purpose of reducing the adjusted basis of other property which is not subject to such liability. See paragraph (c) (6) of § 1.971-1 for treatment of export trade assets which constitute working capital to which section 971(c) (1) applies and which also constitute inventory to which section 971(c) (2) applies or evidences of indebtedness to which section 971(c) (4) applies.

(iii) *Treatment of certain liabilities.* For purposes of subdivisions (i) and (ii) of this subparagraph, a current liability, or a specific charge created with respect to any item of property, principally for the purpose of artificially increasing or decreasing the amount of a controlled foreign corporation's investments in export trade assets shall be taken into account in such a manner as to properly reflect the controlled foreign corporation's investments in export trade assets; whether a specific charge or current liability is created principally for such purpose will depend upon all the facts and circumstances of each case. One of the factors that will be considered in making such a determination with respect to a loan is whether the loan is from a related person, as defined in section 954(d) (3) and paragraph (e) of § 1.954-1.

(iv) *Statement required.* If for purposes of this section a United States shareholder of a controlled foreign corporation reduces the adjusted basis of property which constitutes an export trade asset on the ground that such property is subject to a liability, he shall attach to his return a statement setting forth the adjusted basis of the property before the reduction and the amount and nature of the reduction.

(2) *Increase in investments in export trade assets.* For purposes of section 970(a) and paragraph (b) of this section, the amount of increase in investments in export trade assets of a controlled foreign corporation for a taxable year shall be, except as provided in § 1.970-2, the amount by which—

(i) The amount of its investments in export trade assets at the close of such taxable year, exceeds

(ii) The amount of its investments in export trade assets at the close of the preceding taxable year.

(3) *Decrease in investments in export trade assets.* For purposes of section

970(b) and paragraph (c) of this section, the amount of the decrease in investments in export trade assets of a controlled foreign corporation for a taxable year shall be, except as provided in § 1.970-2, the amount by which—

(i) The amount of its investments in export trade assets at the close of the preceding taxable year, minus

(ii) An amount equal to the excess of recognized losses over recognized gains on sales or exchanges of export trade assets (other than gain or loss from the sale or exchange of inventory which constitutes export trade assets) during the taxable year, exceeds

(iii) The amount of its investments in export trade assets at the close of the taxable year.

§ 1.970-2 Elections as to date of determining investments in export trade assets.

(a) *Nature of elections*—(1) *In general.* In lieu of determining the increase under the provisions of paragraph (d) (2) of § 1.970-1, or the decrease under the provisions of paragraph (d) (3) of § 1.970-1, in a controlled foreign corporation's investments in export trade assets for a taxable year in the manner provided in such provisions, a United States shareholder of such corporation may elect, under the provisions of section 970(c) (4) and this section, to determine such increase or decrease in accordance with the provisions of subparagraph (2) of this paragraph in the case of export trade assets other than facilities described in section 971(c) (3) and/or in accordance with the provisions of subparagraph (3) of this paragraph in the case of export trade assets which are facilities described in section 971(c) (3). An election may be made under subparagraph (2) or (3) of this paragraph with respect to each controlled foreign corporation with respect to which a person is a United States shareholder, within the meaning of section 951(b).

(2) *Election for export trade assets other than facilities.* A United States shareholder of a controlled foreign corporation may elect with respect to a taxable year of such corporation (whether or not the election described in subparagraph (3) of this paragraph is made) to make the determinations under subparagraphs (2) (i) and (3) (iii) of paragraph (d) of § 1.970-1 of the amount of such corporation's investments in export trade assets other than facilities described in section 971(c) (3) as of the close of the 75th day after the close of the taxable year referred to in such subparagraphs of paragraph (d) of § 1.970-1. If such an election is made, the amount of investments in export trade assets other than facilities at the close of the preceding taxable year which is described in subparagraphs (2) (ii) and (3) (i) of paragraph (d) of § 1.970-1 shall be the amount of export trade assets other than facilities which was considered, by reason of the application of the 75-day rule provided in this subparagraph with respect to such preceding taxable year, to be the amount of export trade assets other than facilities at the close of such preceding taxable

year; except that for the first taxable year of the controlled foreign corporation for which the 75-day rule is elected the amount of investments in export trade assets other than facilities at the close of the preceding taxable year described in subparagraphs (2)(ii) and (3)(i) of paragraph (d) of § 1.970-1 shall be the amount of investments in export trade assets other than facilities at the actual close of such preceding taxable year.

(3) *Election for export trade assets which are facilities.* A United States shareholder of a controlled foreign corporation may elect with respect to a taxable year of such corporation (whether or not the election described in subparagraph (2) of this paragraph is made) to make the determinations under subparagraphs (2)(i) and (3)(iii) of paragraph (d) of § 1.970-1 of the amount of such corporation's investments in export trade assets which are facilities described in section 971(c)(3) as of the close of such corporation's taxable year following the taxable year referred to in such subparagraphs of paragraph (d) of § 1.970-1. If such an election is made, the amount of investments in export trade assets which are facilities at the close of the preceding taxable year which is described in subparagraphs (2)(ii) and (3)(i) of paragraph (d) of § 1.970-1 shall be the amount of export trade assets which are facilities which was considered, by reason of the application of the following-year rule provided in this subparagraph with respect to such preceding taxable year, to be the amount of export trade assets which are facilities at the close of such preceding taxable year; except that for the first taxable year of the controlled foreign corporation for which such following-year rule is elected the amount of investments in export trade assets which are facilities at the close of the preceding taxable year described in subparagraphs (2)(ii) and (3)(i) of paragraph (d) of § 1.970-1 shall be the amount of investments in export trade assets which are facilities at the actual close of such preceding taxable year.

(b) *Time and manner of making elections.*—(1) *Without consent.* A United States shareholder shall, with respect to any controlled foreign corporation, make the elections described in paragraph (a) (2) and (3) of this section without the consent of the Commissioner by filing a statement to such effect with his return for his taxable year in which or with which ends the first taxable year of such corporation in which—

(i) Such shareholder owns, within the meaning of section 958(a), or is considered as owning, by applying the rules of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such corporation, and

(ii) Such corporation realizes subpart F income which is reduced under section 970(a) and paragraph (b) of § 1.970-1.

The statement shall contain the name and address of the controlled foreign corporation, identification of such first taxable year of such corporation, and

an indication as to whether the United States shareholder is making one or both of the elections provided in paragraph (a) of this section.

(2) *With consent.* A United States shareholder may make one or both of the elections described in paragraph (a) (2) and (3) of this section with respect to any controlled foreign corporation at any time with the consent of the Commissioner. Consent will not be granted unless the shareholder and the Commissioner agree to the terms, conditions, and adjustments under which the election will be effected. The application for consent to elect shall be made by the shareholder's mailing a letter for such purpose to the Commissioner of Internal Revenue, Washington, D.C., 20224. The application shall be mailed before the close of the first taxable year of the controlled foreign corporation with respect to which the shareholder desires to determine an exclusion under section 970 (a) in accordance with one or both of the elections provided in paragraph (a) of this section. The application shall include the following information:

(i) The name, address, and taxable year of the United States shareholder;

(ii) The name, address, and taxable year of the controlled foreign corporation;

(iii) A statement indicating which of the elections the shareholder desires to make;

(iv) The amount of the foreign corporation's investments in export trade assets (by a category which includes export trade assets other than facilities and a category which includes only export trade assets which are facilities) at the close of its preceding taxable year;

(v) The shareholder's pro rata share of the sum of the amounts by which the subpart F income of the foreign corporation, for all prior taxable years during which such shareholder was a United States shareholder of such corporation, was reduced under section 970(a) and paragraph (b) of § 1.970-1;

(vi) The shareholder's pro rata share of the sum of the amounts which were not included in the subpart F income of the foreign corporation, for all prior taxable years during which such shareholder was a United States shareholder of such corporation, by reason of the application of section 972 and § 1972-1; and

(vii) The shareholder's pro rata share of the sum of the amounts which were previously included in his gross income, for all prior taxable years during which such shareholder was a United States shareholder of such corporation, under section 951(a)(1)(A)(ii) by reason of the application of section 970(b) and paragraph (b) of § 1.970-1 to the foreign corporation.

(c) *Effect of elections.*—(1) *General.* Except as provided in subparagraphs (3) and (4) of this paragraph, an election made under paragraph (a) of this section with respect to a controlled foreign corporation shall be binding on the United States shareholder and—

(i) In the case of the election described in paragraph (a)(2) of this section, shall apply to all investments in export trade assets other than facilities

acquired, or disposed of, by such corporation during the 75-day period following its taxable year for which subpart F income is first computed under the election and during all succeeding corresponding 75-day periods of such corporation, or

(ii) In the case of the election described in paragraph (a)(3) of this section, shall apply to all investments in export trade assets which are facilities acquired, or disposed of, by such corporation during the taxable year following its taxable year for which subpart F income is first computed under the election and during all succeeding corresponding taxable years of such corporation.

(2) *Returns.* Any return of a United States shareholder required to be filed before the completion of a period with respect to which determinations are to be made as to a controlled foreign corporation's investments in export trade assets for purposes of computing such shareholder's taxable income shall be filed on the basis of an estimate of the amount of such corporation's investments in export trade assets at the close of the period. If the actual amount of such investments is not the same as the amount of the estimate, the shareholder shall immediately notify the Commissioner. The Commissioner will thereupon redetermine the amount of such shareholder's tax for the year or years with respect to which the incorrect amount was taken into account. The amount of tax, if any, due upon such redetermination shall be paid by the shareholder upon notice and demand by the district director. The amount of tax, if any, shown by such redetermination to have been overpaid shall be credited or refunded to the shareholder in accordance with the provisions of sections 6402 and 6511 and the regulations thereunder.

(3) *Revocation.*—(i) *In general.*—(a) *Consent required.* Upon application by the United States shareholder, an election made under paragraph (a) of this section may, subject to the approval of the Commissioner, be revoked. Approval will not be granted unless the shareholder and the Commissioner agree to the terms, conditions, and adjustments under which the revocation will be effected.

(b) *Revocation of 75-day rule.* In the case of the revocation of an election described in paragraph (a)(2) of this section, the change in the controlled foreign corporation's investments in export trade assets other than facilities for its first taxable year for which subpart F income or a decrease in investments in export trade assets is computed without regard to the election previously made shall, unless the agreement with the Commissioner provides otherwise, be considered to be the amount by which—

(1) Such corporation's investments in export trade assets other than facilities at the close of such taxable year exceeds or, if applicable, is exceeded by

(2) Such corporation's investments in export trade assets other than facilities at the close of the 75th day after the close of the preceding taxable year of such corporation.

(c) *Revocation of following-year rule.* In the case of the revocation of an election described in paragraph (a)(3) of this section, the change in the controlled foreign corporation's investments in export trade assets which are facilities for its first taxable year for which subpart F income or a decrease in investments in export trade assets is computed without regard to the election previously made shall, unless the agreement with the Commissioner provides otherwise, be considered to be zero.

(ii) *Time and manner of applying for consent to revocation.*—(a) *Application to Commissioner.* The application for consent to revocation of an election shall be made by the United States shareholder's mailing a letter for such purpose to the Commissioner of Internal Revenue, Washington, D.C., 20224. The application shall be mailed before the close of the first taxable year of the controlled foreign corporation with respect to which the shareholder desires to determine an exclusion under section 970(a) or an inclusion under section 970(b) without regard to such election.

(b) *Information required.* The application shall include the following information:

(1) The name, address, and taxable year of the United States shareholder;

(2) The name, address, and taxable year of the controlled foreign corporation;

(3) A statement indicating the election the shareholder desires to revoke under this subparagraph;

(4) The information required under subdivisions (iv) through (vii) of paragraph (b)(2) of this section;

(5) In the case of an application for consent to revocation of an election made under paragraph (a)(2) of this section, the amount of the foreign corporation's investments in export trade assets other than facilities at the close of the 75th day after the close of such corporation's taxable year immediately preceding the taxable year of such corporation; and

(6) The reasons for the request for consent to revocation.

(4) *Transfer of stock.*—(i) *Election in force with respect to export trade assets other than facilities.* (a) If during any taxable year of a controlled foreign corporation—

(1) A United States shareholder who has made the election described in paragraph (a)(2) of this section with respect to such corporation sells, exchanges, or otherwise disposes of all or part of his stock in such corporation, and

(2) The foreign corporation is a controlled foreign corporation immediately after the sale, exchange, or other disposition,

then, with respect to the stock so sold, exchanged, or disposed of, the successor in interest shall consider the controlled foreign corporation's change during the first 75 days of such taxable year in investments in export trade assets other than facilities to be zero.

(b) If the United States shareholder's successor in interest makes an election under paragraph (a)(2) of this section in order to determine an exclusion under

section 970(a) for the taxable year of such corporation in which he acquires such stock, the amount of the controlled foreign corporation's investments in export trade assets other than facilities at the close of its preceding taxable year shall be considered, with respect to the stock so acquired, to be the amount of such corporation's investments in export trade assets other than facilities at the close of the 75th day after the close of such preceding taxable year.

(c) If the United States shareholder's successor in interest makes an election under paragraph (a)(2) of this section in order to determine an exclusion under section 970(a) for a taxable year of such corporation subsequent to the taxable year in which he acquired the stock, the amount of the controlled foreign corporation's investments in export trade assets other than facilities at the close of its taxable year immediately preceding such subsequent taxable year shall, with respect to the stock so acquired, be the amount of such corporation's investments in such assets at the actual close of such preceding taxable year.

(ii) *Election in force with respect to export trade assets which are facilities.*

(a) If during any taxable year of a controlled foreign corporation—

(1) A United States shareholder who has made the election described in paragraph (a)(3) of this section with respect to such corporation sells, exchanges, or otherwise disposes of all or part of his stock in such corporation, and

(2) The foreign corporation is a controlled foreign corporation immediately after the sale, exchange or other disposition,

then, with respect to the stock so sold, exchanged, or disposed of, the successor in interest shall consider the controlled foreign corporation's change for such taxable year in investments in export trade assets which are facilities to be zero.

(b) If the United States shareholder's successor in interest makes an election under paragraph (a)(3) of this section in order to determine an exclusion under section 970(a) for the taxable year of such corporation in which he acquires such stock, the amount of the controlled foreign corporation's investments in export trade assets which are facilities at the close of its preceding taxable year shall be considered, with respect to the stock so acquired, to be the amount of such corporation's investments in export trade assets which are facilities at the close of the taxable year in which such stock is acquired.

(c) If the United States shareholder's successor in interest makes an election under paragraph (a)(3) of this section in order to determine an exclusion under section 970(a) for a taxable year of such corporation subsequent to the taxable year in which he acquired the stock, the amount of the controlled foreign corporation's investments in export trade assets which are facilities at the close of its taxable year immediately preceding such subsequent taxable year shall, with respect to the stock so acquired, be the amount of such corporation's invest-

ments in such assets at the actual close of such preceding taxable year.

(d) *Illustrations.* The principles contained in this section are illustrated by the examples set forth in paragraph (d) of § 1.955-3.

§ 1.971 Statutory provisions; definitions.

Sec. 971. *Definitions.*—(a) *Export trade corporations.* For purposes of this subpart, the term "export trade corporation" means—

(1) *In general.* A controlled foreign corporation (as defined in section 957) which satisfies the following conditions:

(A) 90 percent or more of the gross income of such corporation for the 3-year period immediately preceding the close of the taxable year (or such part of such period subsequent to the effective date of this subpart during which the corporation was in existence) was derived from sources without the United States, and

(B) 75 percent or more of the gross income of such corporation for such period constituted gross income in respect of which such corporation derived export trade income.

(2) *Special rule.* If 50 percent or more of the gross income of a controlled foreign corporation in the period specified in subsection (a)(1)(A) is gross income in respect of which such corporation derived export trade income in respect of agricultural products grown in the United States, it may qualify as an export trade corporation although it does not meet the requirements of subsection (a)(1)(B).

(b) *Export trade income.* For the purposes of this subpart, the term "export trade income" means net income from—

(1) The sale to an unrelated person for use, consumption, or disposition outside the United States of export property (as defined in subsection (e)), or from commissions, fees, compensation, or other income from the performance of commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services in respect of such sales or in respect of the installation or maintenance of such export property;

(2) Commissions, fees, compensation, or other income from commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services performed in connection with the use by an unrelated person outside the United States of patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property acquired or developed and owned by the manufacturer, producer, grower, or extractor of export property in respect of which the export trade corporation earns export trade income under paragraph (1);

(3) Commissions, fees, rentals, or other compensation or income attributable to the use of export property by an unrelated person or attributable to the use of export property in the rendition of technical, scientific, or engineering services to an unrelated person; and

(4) Interest from export trade assets described in subsection (c)(4).

For purposes of paragraph (3), if a controlled foreign corporation receives income from an unrelated person attributable to the use of export property in the rendition of services to such unrelated person together with income attributable to the rendition of other services to such unrelated person, including personal services, the amount of such aggregate income which shall be considered to be attributable to the use of the export property shall (if such amount cannot be established by reference to transactions between unrelated persons) be that part of such aggregate income which the cost of the

export property consumed in the rendition of such services (including a reasonable allowance for depreciation) bears to the total costs and expenses attributable to such aggregate income.

(c) *Export trade assets.* For purposes of this subpart, the term "export trade assets" means—

(1) Working capital reasonably necessary for the production of export trade income,

(2) Inventory of export property held for use, consumption, or disposition outside the United States,

(3) Facilities located outside the United States for the storage, handling, transportation, packaging, or servicing of export property, and

(4) Evidences of indebtedness executed by persons, other than related persons, in connection with payment for purchases of export property for use, consumption, or disposition outside the United States, or in connection with the payment for services described in subsections (b) (2) and (3).

(d) *Export promotion expenses.* For purposes of this subpart, the term "export promotion expenses" means the following expenses paid or incurred in the receipt or production of export trade income—

(1) A reasonable allowance for salaries or other compensation for personal services actually rendered for such purpose,

(2) Rentals or other payments for the use of property actually used for such purpose,

(3) A reasonable allowance for the exhaustion, wear and tear, or obsolescence of property actually used for such purpose, and

(4) Any other ordinary and necessary expenses of the corporation to the extent reasonably allocable to the receipt or production of export trade income.

No expense incurred within the United States shall be treated as an export promotion expense within the meaning of the preceding sentence, unless at least 90 percent of each category of expenses described in such sentence is incurred outside the United States.

(e) *Export property.* For purposes of this subpart, the term "export property" means any property or any interest in property manufactured, produced, grown, or extracted in the United States.

(f) *Unrelated person.* For purposes of this subpart, the term "unrelated person" means a person other than a related person as defined in section 954(d) (3).

[Sec. 971 as added by sec. 12(a), Rev. Act 1962 (76 Stat. 1006)]

§ 1.971-1 Definitions with respect to export trade corporations.

(a) *Export trade corporations.*—(1) *In general.* For purposes of sections 970 through 972 and §§ 1.970-1 to 1.972-1, inclusive, the term "export trade corporation" means a controlled foreign corporation which for the period specified in subparagraph (2) of this paragraph satisfies the conditions specified in subparagraph (3) of this paragraph.

(2) *Three-year period.* The period referred to in subparagraph (1) of this paragraph is the 3-year period ending with the close of the controlled foreign corporation's current taxable year, or such part of such 3-year period as occurs on and after the beginning of the corporation's first taxable year beginning after December 31, 1962, whichever period is shorter.

(3) *Gross income requirements.* The conditions referred to in subparagraph (1) of this paragraph are that the controlled foreign corporation derives—

(i) 90 percent or more of its gross income from sources without the United States, and

(ii) (a) 75 percent or more of its gross income from transactions, activities, or interest described in section 971(b) and paragraph (b) of this section, or

(b) 50 percent or more of its gross income from transactions, activities, or interest described in section 971(b) and paragraph (b) of this section in respect of agricultural products grown in the United States.

(4) *Determination of sources of gross income.* The sources of gross income of a controlled foreign corporation shall be determined for purposes of subparagraph (3) (i) of this paragraph in accordance with the rules for determining sources of gross income set forth in sections 861 through 864 and the regulations thereunder.

(b) *Export trade income.*—(1) *General rule.* For purposes of sections 970 through 972 and §§ 1.970-1 to 1.972-1, inclusive, the term "export trade income" means the gross export trade income of a controlled foreign corporation derived from transactions, activities, or interest described in subdivisions (i) through (vii) of this subparagraph, less deductions allowed under subdivision (viii) of this subparagraph.

(i) *Sale of export property.* Gross export trade income of a controlled foreign corporation includes gross income it derives from the sale of export property (as defined in paragraph (e) of this section) which it purchases, if the sale is made to an unrelated person for use, consumption, or disposition outside the United States. See section 971(b) (1). As a general rule, property will be presumed to have been sold for use, consumption, or disposition in the country of destination of the sale. However, if at the time of the sale the controlled foreign corporation knows, or should have known from the facts and circumstances surrounding the sales transaction, that the property will probably be used, consumed, or disposed of in the United States, such property will be presumed to have been sold for use, consumption, or disposition in the United States unless the controlled foreign corporation establishes that such property was used, consumed, or disposed of outside the United States. For purposes of this subdivision, export property must be sold by a controlled foreign corporation in essentially the same form in which such property is purchased. Normally, storage, handling, transportation, packaging, or servicing of property will be considered not to alter the form in which property is purchased. On the other hand, if a controlled foreign corporation sells property which it manufactures or produces, within the meaning of paragraph (a) (4) of § 1.954-3, no part of the gross income from the sale will be treated as export trade income. The application of this subdivision may be illustrated by the following example:

Example. Controlled foreign corporation A, incorporated under the laws of foreign country Y, purchases articles manufactured

in the United States from domestic corporation M and sells them in the form in which purchased to foreign corporation B, unrelated to A Corporation, for use in foreign countries, X, Y, and Z. The gross income of A Corporation from the purchase and sale of the articles constitutes gross export trade income.

(ii) *Commissions and other income derived in connection with the sale of export property.* Gross export trade income of a controlled foreign corporation includes gross commissions, fees, compensation, or other income derived by such corporation from the performance for any person of commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services in respect of a sale by such corporation in a transaction described in subdivision (i) of this subparagraph or in respect of the sale by any other person of export property to a person unrelated to the controlled foreign corporation for use, consumption, or disposition outside the United States. Such gross export trade income includes payments received for surveys made prior to, and in connection with, the sale of such export property (whether or not such sales are ultimately consummated) if the making of such surveys is part of the controlled foreign corporation's usual pattern of promoting sales of such property in the course of its business. See section 971(b) (1). The term "any person" as used in this subdivision includes a related person as defined in section 954(d) (3) and paragraph (e) of § 1.954-1. The application of this subdivision may be illustrated by the following examples:

Example (1). Controlled foreign corporation A, incorporated under the laws of foreign country X, receives from M Corporation a commission equal to 6 percent of the gross selling price of all personal property shipped by M Corporation as a result of services performed by A Corporation in soliciting orders in foreign countries X, Y, and Z. In fulfillment of such orders, M Corporation ships products manufactured by it in the United States. Corporation A does not assume title to the property sold. Gross commissions received by A Corporation from M Corporation in connection with the sale of such property to persons unrelated to A Corporation for use, consumption, or disposition outside the United States constitute gross export trade income.

Example (2). Foreign corporation B, incorporated under the laws of foreign country X, is a wholly owned subsidiary of domestic corporation N. Corporation N is engaged in the business of manufacturing heavy duty electrical equipment in the United States. By contract, N Corporation engages B Corporation for the purpose of conducting engineering, technical, and financial studies required by N Corporation in the preparation of bids to supply foreign country Y with electrical equipment for a construction project to be undertaken by such country. Corporation N pays B Corporation a fee for the services, all of which are performed in country Y, which is based upon the number of hours of work performed without regard to whether a sale is ultimately consummated. The fee arrangement conforms to B Corporation's usual business pattern of promoting sales of this type. Corporation N does not receive a contract from country Y on its bid to supply equipment. Income derived by B Corporation

from performance of the service contract constitutes gross export trade income.

(iii) *Commissions and other income derived in connection with the installation or maintenance of export property.* Gross export trade income of a controlled foreign corporation includes gross commissions, fees, compensation, or other income derived by such corporation from the performance for any person of commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services in respect of the installation or maintenance of export property which has been sold by such corporation in a transaction described in subdivision (i) of this subparagraph or by any other person to a person unrelated to the controlled foreign corporation for use, consumption, or disposition outside the United States. See section 971(b)(1). The term "any person" as used in this subdivision includes a related person as defined in section 954(d)(3) and paragraph (e) of § 1.954-1.

(iv) *Commissions and other income derived in connection with the use of patents, copyrights, and other like property.* Gross export trade income of a controlled foreign corporation includes gross commissions, fees, compensation, or other income derived by such corporation from the performance for any person of commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services in connection with the use outside of the United States by an unrelated person of patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property, including gross income derived from obtaining licenses for patents, but only if the patent, copyright, or other like property is acquired, or developed, and owned by the manufacturer, producer, grower, or extractor of any export property, in respect of which the controlled foreign corporation also derives gross export trade income within the meaning of subdivision (i), (ii), or (iii) of this subparagraph. See section 971(b)(2). The application of this subdivision may be illustrated by the following example:

Example. Foreign corporation A incorporated under the laws of foreign country X, is a wholly owned subsidiary of domestic corporation M. Corporation M, the owner of a patent registered in foreign country X, grants B Corporation, a corporation unrelated to A Corporation, the right to use such patent in foreign country Y in exchange for payment of a royalty. By a separate contract with B Corporation, A Corporation agrees for a gross fee of \$100,000 to furnish, by maintaining a staff of technical representatives at the offices of B Corporation, technical services to B Corporation in connection with B Corporation's use of the patent. Corporation A also derives export trade income from the sale of export property which it purchases from M Corporation, the manufacturer of such property, and sells to C Corporation, an unrelated person, for use in country Y by C Corporation. The gross fee of \$100,000 received by A Corporation for the furnishing of technical services in connection with B Corporation's use of M Corporation's patent constitutes gross export trade income since the service for which the fee is paid is performed in connection with

the use outside the United States by an unrelated person (B Corporation) of a patent owned by a manufacturer (M Corporation) of export property in respect of which the controlled foreign corporation (A Corporation) derives gross export trade income from the sale to an unrelated person (C Corporation) for use outside the United States of export property purchased by it from the manufacturer (M Corporation).

(v) *Income attributable to use of export property by an unrelated person.* Gross export trade income of a controlled foreign corporation includes gross commissions, fees, rents, compensation, or other income which is received by such corporation from an unrelated person and is attributable to the use of export property by such unrelated person. See section 971(b)(3). The application of this subdivision may be illustrated by the following example:

Example. Foreign corporation A, incorporated under the laws of foreign country X, is a wholly owned subsidiary of domestic corporation M. Corporation A acquires by purchase bottling machines manufactured in the United States and leases the machines to B Corporation, a corporation unrelated to A Corporation, for use by B Corporation in foreign country Y. Gross rental income of A Corporation from the lease of the machines to B Corporation constitutes gross export trade income.

(vi) *Income attributable to the use of export property in the rendition of technical, scientific, or engineering services—*

(a) *General.* Gross export trade income of a controlled foreign corporation includes gross commissions, fees, compensation, or other income which is received by such corporation from an unrelated person and is attributable to the use of export property in the performance of technical, scientific, or engineering services to such unrelated person. See section 971(b)(3).

(b) *Rule of apportionment.* If a commission, fee, or other income received by a controlled foreign corporation from an unrelated person under a contract or arrangement for the performance of technical, scientific, or engineering services is not solely attributable to the use of export property in the performance of such services and the amount of the gross income attributable to such use of export property cannot be established by reference to transactions between other unrelated persons, such gross income shall be an amount which bears the same ratio to total gross income from the contract or arrangement as the cost of the export property consumed in the performance of such services, including a reasonable allowance for depreciation with respect to the export property so used, bears to the total costs and expenses attributable to the production of income under the contract or arrangement.

(c) *Illustration.* The application of this subdivision may be illustrated by the following example:

Example. Foreign corporation A, incorporated under the laws of foreign country X, is a wholly owned subsidiary of domestic corporation M. Corporation A is engaged in the seismograph service business in foreign country X. In an effort to establish the probable existence of oil in a concession area it owns in foreign country Y, B Corporation

which is unrelated to A Corporation enters into a contract with A Corporation whereby A Corporation is required to make seismographic tests of the area in country Y for a fixed fee of \$100,000. In performance of the contract, A Corporation hires a skilled crew to carry out the contract and utilizes equipment and supplies (for example, trucks, seismographic equipment, etc.) which constitute export property. Corporation A cannot establish by reference to transactions between other unrelated persons, the income attributable to the use of the export property in the performance of the contract. Corporation A's total costs and expenses (for example, salaries of the crew, administrative expenses, all supplies, total depreciation on property used in performance of the contract, etc.) incurred in performance of the contract are \$80,000. The cost of export property consumed in performance of the contract (for example, dynamite, motor oil, and other supplies which were produced in the United States, reasonable depreciation on trucks and seismographic equipment manufactured in the United States and used in performance of the contract, etc.) is \$30,000. Corporation A's gross export trade income from the contract is \$37,500, that is, the amount which bears the same ratio to total gross income from the contract (\$100,000) as the cost of the export property consumed in the rendition of the services (\$30,000) bears to total costs and expenses attributable to the contract (\$80,000).

(vii) *Interest from export trade assets.* Gross export trade income of a controlled foreign corporation includes interest derived by it from export trade assets described in section 971(c)(4) and paragraph (c)(5) of this section. See section 971(b)(4).

(viii) *Deductions to be taken into account.* Export trade income of a controlled foreign corporation for any taxable year shall be the amount determined by deducting from the items or categories of gross income described in subdivisions (i) through (vii) of this subparagraph the entire amount of those expenses, taxes, and other deductions which are directly related to those items or categories of income and a ratable part of any other expenses, taxes, or other deductions which are indirectly related to such items of income, except that no expense, tax, or other deduction shall be allocated to an item or category of income to which it clearly does not apply and no deduction allowable to such controlled foreign corporation under section 882(c) and § 1.882-3 shall be taken into account.

(2) *Duplicate treatment of an item.* No item of gross income or deduction shall be taken into account more than once in determining export trade income of a controlled foreign corporation.

(c) *Export trade assets—*(1) *In general.* For purposes of sections 970 through 972 and §§ 1.970-1 to 1.972-1, inclusive, the term "export trade assets" means—

(i) Working capital reasonably necessary for the production of export trade income.

(ii) Inventory of export property held for use, consumption, or disposition outside the United States.

(iii) Facilities located outside the United States for the storage, handling, transportation, packaging, servicing, sale, or distribution of export property, and

(iv) Evidences of indebtedness executed by unrelated persons in connection with payment for purchases of export property for use, consumption, or disposition outside the United States, or in connection with the payment for services described in section 971(b) (2) or (3) and paragraph (b) (1) (iv), (v), or (vi) of this section.

(2) *Working capital.* For purposes of subparagraph (1) (i) of this paragraph, working capital of a controlled foreign corporation is the excess of its current assets over its current liabilities. Liabilities maturing in one year or less shall be considered current liabilities. A determination of the amount of working capital of a controlled foreign corporation which is reasonably necessary for the production of export trade income will depend upon the nature and volume of the activities of the controlled foreign corporation which produce export trade income as they exist on the applicable determination date. In determining working capital which is reasonably necessary for the production of export trade income, the anticipated future needs of a business shall not be considered except to the extent that it is clearly demonstrable that such needs relate to the year of the controlled foreign corporation following the applicable determination date.

(3) *Inventory of export property.* For purposes of subparagraph (1) (ii) of this paragraph, the inclusion of items in inventory shall be determined in accordance with rules applicable to domestic corporations. See §§ 1.471-1 through 1.471-9. Inventory of export property of a controlled foreign corporation includes export property held for use, consumption, or disposition outside the United States regardless of where it is located on the applicable determination date. Thus, such property may be physically located in the United States on such date. However, for property physically located in the United States to constitute export property, it must have been acquired by the controlled foreign corporation with a clear intent that it would dispose of the property for use, consumption, or disposition outside the United States. As a general rule, if during the year following the applicable determination date export property which was physically located in the United States on such date is actually exported for use, consumption, or disposition outside the United States, such property will be deemed held for such purpose on the applicable determination date. On the other hand, the indefinite warehousing of export property in the United States by the controlled foreign corporation, or the subsequent sale of export property by such corporation for use, consumption, or disposition in the United States, will evidence a lack of intent by such corporation on the applicable determination date to hold such property for use, consumption, or disposition outside the United States.

(4) *Facilities located outside the United States—(i) In general.* For purposes of subparagraph (1) (iii) of this paragraph, a facility, as defined in subdivision (ii) (a) of this subparagraph,

will be considered an export trade asset only—

(a) If such facility is located outside the United States, and

(b) To the extent that such facility is used, within the meaning of subdivision (ii) (c) of this subparagraph, by the controlled foreign corporation for the storage, handling, transportation, packaging, servicing, sale, or distribution of export property in essentially the same form in which such property is acquired by such corporation.

Thus, a facility in which property is manufactured or produced, even though export property is used or consumed in the production or becomes a component part of the manufactured article, will not qualify as an export trade asset.

(ii) *Special rules—(a) Facility defined.* For purposes of subdivision (i) of this subparagraph, the term "facility" includes any asset or group of assets used for the storage, handling, transportation, packaging, servicing, sale, or distribution of export property. Thus, such term includes warehouse, storage, or sales facilities (for example, sales office equipment), transportation equipment (for example, motor trucks, vessels, etc.), and machinery and equipment (for example, packaging equipment, servicing equipment, cranes, fork lift trucks used in warehouses, etc.).

(b) *Determination of location of transportation facilities.* A transportation facility shall be considered to be located outside the United States for purposes of subdivision (i) (a) of this subparagraph if such property is predominantly located outside the United States. As a general rule, on an applicable determination date a transportation facility will be considered to be predominantly located outside the United States if 70 percent or more of the miles traversed (during the 12-month period immediately preceding such determination date or for such part of such period as such facility is owned by the controlled foreign corporation) in the use of such facility are traversed outside the United States or if such facility is located outside the United States at least 70 percent of the time during such period or such part thereof.

(c) *Determination of use.* For purposes of subdivision (i) (b) of this subparagraph, the extent to which a facility is used in carrying on the activities described in such subdivision depends on the use made of the facility for the 12-month period immediately preceding the applicable determination date or for such part of such period as such facility is owned by the controlled foreign corporation. The method of measuring such use will depend upon the facts and circumstances in each case. However, such determinations of use will generally be made for a facility as a whole and not on the basis of individual items used in the operation of a facility. Thus, a determination as to the use of a warehouse facility will generally be made with respect to the entire facility and not separately for the items used in such warehouse, such as fork lift trucks, storage bins, etc.

(5) *Evidences of indebtedness.* For purposes of subparagraph (1) (iv) of this paragraph, the term "evidence of indebtedness" shall mean a note, installment sales contract, a time bill of exchange evidencing a sale on credit, or similar written instrument executed by an unrelated person which evidences the obligation of such unrelated person to pay for export property which such person purchases for use, consumption, or disposition outside the United States or to pay for services described in section 971(b) (2) or (3) and paragraph (b) (1) (iv), (v), or (vi) of this section which are performed for such person. Receivables which arise out of the delivery of export property, or the performance of services, which are evidenced by invoices, bills of lading, bills of exchange which do not evidence a sale on credit, sales slips, and similar documents created by the unilateral act of a creditor shall not be considered evidences of indebtedness for purposes of section 971 (c) (4).

(6) *Duplication of treatment and priority of application.* No asset which constitutes an export trade asset shall be taken into account more than once in determining the investments in export trade assets of a controlled foreign corporation. Assets which constitute working capital and also constitute inventory to which section 971(c) (2) applies or evidences of indebtedness to which section 971(c) (4) applies shall be taken into account in determining whether the amount of working capital of the controlled foreign corporation is reasonably necessary for the production of export trade income. However, to the extent that the amount of inventory to which section 971(c) (2) applies or evidences of indebtedness to which section 971(c) (4) applies is not included in working capital to which section 971(c) (1) applies on the ground that such amount is not reasonably necessary for the production of export trade income, the amount may be included under section 971(c) (2) or 971(c) (4), as the case may be, in a controlled foreign corporation's investments in export trade assets.

(d) *Export promotion expenses—(1) In general.* For purposes of sections 970 through 972 and §§ 1.970-1 to 1.972-1, inclusive, the term "export promotion expenses" means, subject to the provisions of subparagraph (2) of this paragraph, all the ordinary and necessary expenses paid or incurred during the taxable year by the controlled foreign corporation which are reasonably allocable to the receipt or production of export trade income including—

(i) A reasonable allowance for salaries or other compensation for personal services actually rendered for such purpose,

(ii) Rentals or other payments for the use of property actually used for such purpose, and

(iii) A reasonable allowance for the exhaustion, wear and tear, or obsolescence of property actually used for such purpose.

In determining for purposes of this subparagraph whether expenses are reasonably allocable to the receipt or pro-

duction of export trade income, consideration shall be given to the facts and circumstances of each case. As a general rule, if export trade income results from the sale or rental of export property, export promotion expenses allocable to such income shall include warehousing, advertising, selling, billing, collection, other administrative, and similar costs related to the marketing activity, but shall not include cost of goods sold, income or similar tax, any expense which does not advance the distribution or sale of export property for use, consumption, or disposition outside the United States, or any expense for which the controlled foreign corporation is reimbursed. If export trade income results from the performance of services, export promotion expense will, as a general rule, be deemed to include compensation of the persons performing services for the controlled foreign corporation in the execution of the service contract or arrangement and administrative expenses reasonably allocable to such compensation. In no case shall income taxes be included in export promotion expenses.

(2) *Expenses incurred within the United States.* No expense incurred within the United States shall be treated as an export promotion expense for purposes of section 971(d) and subparagraph (1) of this paragraph unless at least—

(i) 90 percent of all salaries and other personal service compensation incurred in the receipt or the production of export trade income,

(ii) 90 percent of rents and other payments for the use of property used in the receipt or the production of export trade income,

(iii) 90 percent of the allowances for the exhaustion, wear and tear, or obsolescence of property used in the receipt or the production of export trade income, and

(iv) 90 percent of all other ordinary and necessary expenses reasonably allocable to the receipt or the production of export trade income.

is incurred outside the United States. For this purpose, personal service compensation will be considered incurred at the place where the service is performed (for example, salaries will be considered incurred at the place where the employee works; payments for art work will be considered incurred at the place where the art work is prepared, etc.); rent, depreciation, and other expenses related to real or personal property will be considered incurred at the place where the property is located; and expenses for media advertising will be considered incurred at the place where the advertising is consumed. For such purpose, newspaper or periodical advertising will be considered consumed where the newspaper or periodical is principally distributed, and television and radio advertising will be considered consumed at the place where the audience is primarily located. Technicalities of contract or payment, for example, the place where a contract is executed or the location of a bank account from which payment is

made, shall not be determinative of the place where an expense is incurred.

(e) *Export property.* For purposes of sections 970 through 972 and §§ 1.970-1 to 1.972-1, inclusive, the term "export property" means property, or any interest in property, which is manufactured, produced, grown, or extracted in the United States. Whether property will be considered manufactured or produced in the United States will depend on the facts and circumstances of each case. As a general rule, if—

(1) The property sold, serviced, used, or rented by the controlled foreign corporation is substantially transformed in the United States prior to its export from the United States, or

(2) The operations conducted in the United States with respect to the property sold, serviced, used, or rented by the controlled foreign corporation, whether performed in the United States by one person or a series of persons in a chain of distribution, are substantial in nature and are generally considered to constitute the manufacture or production of property,

then the property sold, serviced, used, or rented will be considered to have been manufactured or produced in the United States. The rules under paragraph (a)

(4) (ii) of § 1.954-3, relating to the substantial transformation of property, and paragraph (a) (4) (iii) of such section, dealing with a substantive test for determining whether property will be treated as having been manufactured or produced, shall apply for purposes of making determinations under this paragraph.

(f) *Unrelated person.* For purposes of sections 970 through 972 and §§ 1.970-1 to 1.972-1, inclusive, the term "unrelated person" means a person other than a related person as defined in section 954(d) (3) and paragraph (e) of § 1.954-1.

[F.R. Doc. 63-13177; Filed, Dec. 19, 1963; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 907]

NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Notice of Proposed Rule Making With Respect to Approval of Expenses and Fixing of Rate of Assessment for 1963-64 Fiscal Year

Consideration is being given to the following proposals submitted by the Navel Orange Administrative Committee, established under Marketing Agreement No. 117, as amended, and Order No. 907, as amended (7 CFR Part 907, 27 F.R. 10087), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), as the agency to administer the terms and pro-

visions thereof: (1) That expenses not to exceed \$224,300 will be necessarily incurred during the fiscal year November 1, 1963, through October 31, 1964, for the maintenance and functioning of the committee established under the aforesaid amended marketing agreement and order, and (2) that there be fixed, as the share of such expenses which each handler who first handles oranges shall pay during the fiscal year in accordance with the aforesaid marketing agreement and order, the rate of assessment of one cent (\$0.01) per carton of oranges handled by such handler as the first handler thereof during such fiscal year.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file the same with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Room 2077, South Building, Washington, D.C., 20250, not later than the 10th day after the publication of this notice in the FEDERAL REGISTER. All documents should be filed in quadruplicate.

As used herein, "handle," "handler," "oranges," "fiscal year," and "carton" shall have the same meaning as is given to each such term in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 17, 1963.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 63-13182; Filed, Dec. 19, 1963; 8:48 a.m.]

[7 CFR Part 1005 etc.]

HANDLING OF MILK IN CERTAIN MARKETING AREAS

Decision on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Docket No.	Marketing area
1005-1034	AO-177-A22 AO-175-A18	Tri-State, Dayton-Springfield, Ohio.
1035-1037	AO-176-A17 AO-197-A9	Columbus, Ohio. North Central Ohio.
1049	AO-319-A3	Indianapolis, Ind.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, an amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Columbus, Ohio, on November 20-21, 1963, pursuant to the notice thereof issued November 12, 1963 (28 F.R. 12170) and a supplemental notice thereof issued November 13, 1963 (28 F.R. 12226).

The material issues on the record of the hearing related to:

1. The need for an emergency Class I price increase of 35 cents per hundred-

weight through April 1964 in each of the above markets; and

2. Whether an emergency exists which warrants the omission of a recommended decision and the opportunity for interested parties to file exceptions thereto and the immediate issuance of a final decision.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. An increase of 10 cents per hundredweight in the Class I price should be made in the Tri-State order for the months of January and February 1964. No action should be taken to revise the Class I prices under the Columbus, Dayton-Springfield, North Central Ohio and Indianapolis orders.

Producers in all five markets proposed that Class I prices should be increased 35 cents per hundredweight through April 1964. They argued that this was necessary to offset increased production costs caused by drought conditions in the production area and thereby assure production of an adequate supply of milk for the markets.

The record clearly indicates that drought conditions existed in the production area during the late summer and early fall months. This caused earlier than normal feeding of hay as pasture conditions were below normal in most areas and in some instances no pasture was available. The drought condition has extended the normal winter feeding season and will require additional supplies of hay and feed grains. While supplies of these feeds are available, prices have increased 4-16 percent relative to a year ago.

In all markets there has been a significant increase in the proportion of the available supply of milk used for Class I purposes. In the Tri-State market substantial quantities of milk were imported from Wisconsin and Minnesota during October to supplement the local supply.

Handlers in all five markets, while recognizing that the drought has materially affected producer costs, argued that a price increase was not warranted as there is an adequate supply of milk and the pricing provisions of the orders have resulted in higher prices to producers.

Under the standards provided in the Agricultural Marketing Agreement Act of 1937 the Secretary is required to fix prices which will reflect factors affecting market supply and demand for milk in the marketing area, insure a sufficient quantity of pure and wholesome milk and be in the public interest. The adequacy of milk supplies, therefore, is an important factor in fixing prices under an order. Under this statute drought relief, as such, cannot properly be granted to producers through amendment of the orders.

Under the programs administered by the Department of Agriculture, other avenues of relief are open to producers to receive relief from the existing drought conditions. Under these programs producers in areas which have been desig-

nated disaster areas are permitted to harvest hay or graze cows on land which has been retired from crop production under soil conservation and related programs. In some instances producers are permitted to purchase Commodity Credit Corporation owned feeds at reduced prices.

At the time of the hearing only two counties in the milksheds of the above markets had been officially designated as disaster areas.

However, in those areas where supplies of producer milk have been substantially decreased in relation to Class I sales and where they have reached the point that an adequate supply of milk is threatened, it appears proper to provide a price increase within the framework of the Agricultural Marketing Agreement Act. The Tri-State market is the only market which warrants a price increase under these considerations.

Tri-State: The percentage of producer milk utilized in Class I during October 1963 was 91.6 percent. This is slightly higher than the corresponding percentages of 89.0 and 87.1 for October 1962 and 1961 respectively. Normally Class I utilization is between 87 and 90 percent during the fall and winter months in the Tri-State market.

This fall handlers have found it necessary to import substantial amounts of milk from as far as Minnesota and Wisconsin to meet the market's needs for fluid milk. During October 1.65 million pounds of other source milk was used for Class I, representing about five percent of gross Class I use.

Under these supply-sales conditions the Class I price should normally be increased to encourage an adequate supply of milk for the market—However, the Class I price will be somewhat below the November level through February 1964 due to the action of the supply-demand adjuster in the order.

Official notice is taken of the order issued December 4, 1963 (28 F.R. 12922) suspending certain provisions of the supply-demand adjuster in the order for the month of December 1963. This suspension offset, in part, the substantial reduction in the Class I price which otherwise would have occurred for the month of December.

Action should also be taken for the months of January and February 1964, to offset in part the further reduction in the Class I price which will occur in the months of January and February because of the action of the supply-demand adjuster.

Producers asked for an increase of 35 cents per hundredweight to run through April 1964. However, an increase of 10 cents will serve to encourage producers to maintain their production during January and February. It will also result in a Class I price which will approximate the price at which an alternate supply can be obtained for the market from outside sources.

In March 1964 the downward trend of the Tri-State supply-demand adjuster is expected to end and the Class I price should tend to be higher in the ensuing months. Also in March the Class I price under the Chicago order where most sup-

plemental supplies are being obtained will undergo a seasonal reduction of 20 cents. In view of these considerations the emergency price relief should not be continued beyond February. To extend it further would disrupt alignment of Class I prices among markets and could cause unnecessary and uneconomic shifts of milk supplies between markets.

Columbus, Dayton-Springfield, North Central Ohio and Indianapolis: As in the Tri-State market Class I utilization of producer milk is also higher in relation to last year in the remaining four markets. However, there is no evidence that significant amounts of supplemental supplies are needed to adequately supply these markets through April 1964.

In the Columbus market Class I utilization of producer milk was 89 percent in October. By shifting available supplies of milk among their plants, handlers were able to meet their needs of milk for Class I use from the market's normal supply. However, handlers indicated that during the first three weeks of November production had increased relative to sales to the point where it was no longer necessary to shift supplies among plants to meet their milk requirements for Class I use. Historically the proportion of the market's available supply used in Class I tends to decrease in the winter months compared to October. Thus, it appears that the market will have an adequate supply of milk this winter.

The supply-demand adjuster in the Columbus order will increase the Class I price if the present supply-sales pattern in the market continues. During December the supply-demand adjustment is a plus 38 cents. The action of the supply-demand adjuster together with the increased proportion of the supply being used in Class I will result in substantially higher uniform prices to producers than prevailed a year ago. During October the uniform price was 33 cents higher than in October 1962 and it may be as much as 50 cents higher during the winter months. The higher price will afford the encouragement producers need to maintain their production throughout the winter.

In the North Central Ohio market 91.7 percent of the deliveries of milk by producers was used in Class I during October. This was 11.8 percent above October 1962—yet there is little evidence of milk being imported to supplement the available supply from producers. One witness indicated that a few tank loads of milk were obtained from the Northeastern Ohio market during September and October. However, very little of it was allocated to Class I. The Northeastern Ohio market is amply supplied with milk. Since the production areas for these two markets overlap and the North Central Ohio price is identical to the Northeastern Ohio price which would prevail at the same location, supplemental supplies can be obtained for a nominal service charge.

The supply-demand adjuster under the Northeastern Ohio order which reflects the supply-sales experience under both the Northeastern and North Central Ohio orders will increase the Class

I price under the orders if supplies become short relative to sales. This adjuster has been at a minus 25 cents for many months, but is minus 19 cents in December and is expected to approach close to zero in January and February. This will automatically increase the Class I price in the North Central Ohio market by six cents in December and possibly an additional 19 cents by February if the supply-sales experience in the two markets conforms to the standard utilization percentage provided in the Northeastern Ohio order.

Under these circumstances any increase in the North Central Ohio Class I price would disrupt the price alignment with the Northeastern Ohio order and could cause unnecessary shifts of milk supplies. The present price structure will appropriately reflect the supply-sales conditions in the market and insure an adequate supply.

In the Dayton-Springfield market Class I utilization of producer milk is up substantially from last year. During October 83.4 percent of receipts from producers were allocated to Class I compared to 75.2 percent in October 1962. Little, if any, bulk milk from other sources has been imported for Class I use. The cooperative association which operates a "supply-balancing plant" has been able to apportion the available supply among handlers as needed.

Dayton handlers testified that substantial amounts of packaged milk sales were made during September and October from the Dayton market to other Ohio markets. These sales were confined to these two months. One handler testified that he and other handlers in the market have at the request of the cooperative association refrained from adding producers for the purpose of reducing the proportion of surplus on the market and thereby enhance blend prices to producers.

Uniform prices to producers were somewhat higher in both September and October 1963 than in the corresponding months of 1962. This situation will continue through the winter months, partly as a result of the increased percentage of milk utilized in Class I and partly as a result of higher Class I prices. The basic formula is higher than a year ago and the action of the supply-demand adjuster will increase the Class I price by an additional amount if supplies continue shorter relative to sales.

The percentage of producer milk in Class I in the Indianapolis market is slightly higher than a year ago. In September 1962 the percentage was 78.9, and in September 1963 was 80.1. In October 1962 the percentage was 81.5 and in October 1963 it was 83.7.

Producer receipts are much greater than a year ago but Class I sales have increased to an even greater extent. Part of the increase in both receipts and Class I sales is attributable to the expansion of the marketing area which occurred on June 1, 1963. Daily production per farm in both September and October was approximately 9 percent greater than a year ago, but handlers have greatly expanded their sales outside the marketing area, even to as far away as Iowa.

It is difficult to determine how much other source milk was actually needed for Class I use. Some was utilized in Class I in every month of 1963. In June 663,253 pounds was classified as Class I although about 63.8 percent of producer milk was utilized in Class I in that month. Some of this milk was purchased in packaged form in plastic coated gallon cartons before such packaging equipment became available in the market.

Only one handler testified to having purchased bulk other source milk for fluid use in recent months. This consisted of receipts from the Louisville or Chicago markets on a few peak bottling days. Similar purchases were made in the fall of 1962.

The present Class I price is high enough to attract an adequate supply of milk. In November two farm routes totaling between 40 and 50 thousand pounds of milk per day were transferred to the Indianapolis market from northern Indiana. The spokesman for the cooperative association which represents these producers stated the transfer was made because these producers would receive a higher price on the Indianapolis market than they had been receiving elsewhere.

General comments. As noted above handlers unanimously opposed the requested increase. Many maintained that the shortened supply was partly the result of cooperating with producer associations to bring the supply more into line with fluid requirements, thereby reducing surpluses and increasing uniform prices to producers through the resulting improvement in utilization.

Handler witnesses testified that any price increase resulting from the hearing should be 20 cents or a multiple thereof which could be translated into one-half cent increases in consumer prices. This argument has little weight since the action of the basic formula price and supply-demand adjusters frequently change prices a few cents at a time. The 10-cent increase recommended for the Tri-State market is no more than has frequently taken place as a result of changes in the above mentioned factors.

2. Emergency action. The due and timely execution of the function of the Secretary under the Act imperatively and unavoidably requires the omission of a recommended decision and opportunity for exceptions thereto, on the above issues.

The conditions in the markets are such that producers and handlers should be informed of the action taken as soon as possible. Any delay in informing interested parties in the Tri-State market of the conclusions reached will tend to make ineffective the relief sought.

Likewise producers in the Columbus, Dayton-Springfield, Indianapolis and North Central Ohio markets should be advised promptly that their request is denied so that they may take whatever steps are necessary to secure drought relief through other means. The time necessarily involved in the preparation, filing and publication of a recommended decision and the filing of exceptions thereto could in this instance contribute to a delay in their quest for drought relief through other means.

The notice of hearing stated that consideration would be given to the economic and emergency marketing conditions relating to the proposed amendments. Action under the procedure described above was requested by proponents at the hearing.

It is therefore found that good cause exists for omission of the recommended decision and the opportunity for filing exceptions thereto.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order (Part 1005) regulating the handling of milk in the Tri-State marketing area and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein:

(a) The tentative marketing agreement and the order as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Tri-State Marketing Area" and "Order Amending the Order, Regulating the Handling of Milk in the Tri-State Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order, as hereby proposed to be amended by the attached order which will be published with this decision.

Determination of representative period. The month of September 1963 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order amending the order, regulating the handling of milk in the Tri-State marketing area, is approved or favored by producers, as defined under the terms of the order, as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on December 17, 1963.

GEORGE L. MEHREN,
Assistant Secretary.

Order¹ Amending the Order Regulating the Handling of Milk in the Tri-State Marketing Area

§ 1005.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Tri-State marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as

hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof the handling of milk in the Tri-State marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

In paragraph (a) of §1005.51 revise the provision preceding the table to read as follows:

§ 1005.51 Class I milk prices.

(a) Add the following amounts for the months indicated and during January and February 1964 add an additional 10 cents:

[F.R. Doc. 63-18170; Filed, Dec. 19, 1963; 8:46 a.m.]

[7 CFR Part 1046]

[Docket No. AO-123-A27]

**MILK IN LOUISVILLE-LEXINGTON-
EVANSVILLE MARKETING AREA**

**Decision on Proposed Amendments to
Tentative Marketing Agreement
and to Order**

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Louisville, Kentucky, on November 26, 1963, pursuant to notice thereof issued on November 19, 1963 (28 F.R. 12368).

The material issues on the record of the hearing relate to:

(1) The need for an emergency Class I price increase through April 1964.

(2) Whether an emergency exists which warrants the omission of a recommended decision and the opportunity for interested parties to file exceptions thereto and for immediate issuance of a final decision.

Findings and conclusions. The following findings and conclusions on material issues are based on evidence at the hearing and the record thereof:

1. *Need for an emergency Class I price increase:* The present Class I price formula of the Louisville-Lexington-Evansville order should not be amended to provide a temporary price increase.

The principal cooperative association of producers serving the market requested the Class I price be increased a minimum of 35 cents effective at the earliest possible date, such increase to continue through April 1964. The association

claimed that drought conditions have created severe economic hardship for milk producers and have threatened the availability of an adequate milk supply. This condition, they argued, warrants an emergency price adjustment.

The record indicates drought conditions of varying degree throughout the milkshed area. During the critical growing season the most severe drought conditions were in a part of Western Kentucky which produces a relatively minor share of the supply for the market. Of the 24 Kentucky counties designated by the U.S. Department of Agriculture in July and August as drought areas, nine counties were within the Louisville-Lexington-Evansville milk supply area.¹ Prior to the hearing, no other counties in Indiana or Kentucky were officially designated drought areas by the U.S. Department of Agriculture.

Rainfall in the vicinity of the nine-county drought area was below normal in July and August, grain and hay crops were damaged, and pasture conditions were poor. Available farm stocks of winter feed have been fed in some cases two months earlier than usual, and water supplies have been severely reduced. Evidence of more than usual culling of dairy herds was cited. It was testified that farmers in this area will need to purchase supplemental feed supplies later in the winter season. A total of 133 producers shipping to handlers in the market were located in the nine-county area in December 1962, or about four percent of the total number of producers on the market.

Central Kentucky and Indiana portions of the milk supply area were less affected by drought during the growing season. Rainfall in the Kentucky and Indiana counties comprising the central milkshed area was normal or above normal until late September. Grain and hay crops and pasture conditions were good. Due to below normal rainfall in October and the first half of November fall pastures and cover crops were damaged and dairy farmers started using winter feed. About half of the producers for the market are located in this central area.

For the State of Kentucky corn and hay crops were good and exceeded last year's production. Average pasture conditions for the State, in late summer, were better than last year. For August and September, conditions were reported 88 percent of normal compared to 87 and 63 percent, respectively, for the previous year. Pasture conditions were reported 78 percent of normal in October of this year and 44 percent of normal in November.

Drought relief cannot properly be granted to producers through amendment of the orders issued under the Agricultural Marketing Agreement Act of 1937. Other programs administered

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

¹ Official notice is taken of U.S.D.A. Press Releases 2553-63, 2696-63, 2759-63, and 2855-63. The nine Kentucky counties in the milkshed area of the Louisville-Lexington-Evansville market designated drought areas were Henderson, Hopkins, Logan, McLean, Muhlenberg, Ohio, Todd, Union, and Webster.

by the Department of Agriculture provide alternative avenues of relief. For instance, producers located in the Kentucky counties listed as drought areas previously referred to became eligible for grazing and haying privileges on land retired from crop production under soil conservation, feed grain, or wheat stabilization programs. In counties declared drought disaster areas in some other parts of the country, the Department of Agriculture permitted producers to purchase Commodity Credit Corporation owned feed grains at reduced prices.² At the time this hearing record was taken, no drought assistance other than grazing or haying privileges had been granted.

Under the standards provided in the Agricultural Marketing Agreement Act of 1937 the Secretary is required to fix prices which will reflect factors affecting market supply and demand for milk in the marketing area, insure a sufficient quantity of pure and wholesome milk and be in the public interest. The adequacy of milk supplies therefore is an important factor in establishing the proper price level.

Market information shows that the adequacy of the milk supply for the Louisville-Lexington-Evansville market is not endangered at this time. In recent months prior to October, the percentage of producer milk used in Class I was about the same this year as last. In July, August and September 70 percent, 73 percent and 77 percent, respectively, of producer milk was utilized in Class I, compared to 69, 72, and 78 percent in the same months last year.

The percent of producer milk used in Class I normally increases in October and November compared to August and September. In October 1963, 85 percent of the producer milk supply was used for the fluid needs of handlers compared to 79 percent in October 1962. The higher level of Class I utilization in October this year resulted from a greater increase in Class I disposition than the increase in production.

Milk production for the Louisville-Lexington-Evansville market has been higher this year than last. In the recent months of August, September and October, producer receipts were 10.8, 6.7 and 2.4 percent greater, respectively, than the same months of the previous year.

Gross Class I disposition in the market also has been generally higher than last year. In the recent months of August, September and October, gross Class I sales were 11.7, 5.6 and 10.3 percent greater, respectively, than the same months of the previous year. The increase over a year ago was attributable largely to sales by handlers on regular routes in and out of the marketing area, and to an additional handler coming under order regulation.

The higher level of Class I disposition by handlers this year has not resulted

in need for supplemental supplies from nonproducer sources, except in a few sporadic instances in October and November. The first instance of purchases of milk from other sources was in October when the producer association obtained 94,420 pounds of milk from another order market. This amount was less than $\frac{1}{10}$ of one percent of gross Class I disposition of handlers. During November it was testified that supplemental supplies of a comparable amount would be received. Efforts by the cooperative association and handlers to achieve efficient allocation of supplies have minimized the need for procurement of additional supplies. A representative of the cooperative association stated that he anticipated need for somewhat more supplemental supplies in December but indicated an amount less than 1 percent of Class I needs of the market. Record data indicate, however, that normally the percentage of producer milk used in Class I declines from the November level in subsequent months.

It may be expected, also, that price levels in the market, which are higher than last year, will tend to assure adequacy of milk supplies. Class I prices in August, September, October, and November 1963 exceeded the Class I prices of the same months last year by 38, 32, 29, and 24 cents per hundredweight, respectively. This increase was due to action of the supply-demand factor and an increase in the level of the basic formula price. In November, for instance, the supply-demand adjustment (+24 cents) was 16 cents higher and the basic formula price was 8 cents higher than the same factors in the previous November.

Payments to producers under the order in recent months also have been higher than a year ago. In August, September, and October 1963, payments per hundredweight of producer milk (uniform price in August and uniform price plus fall premium payments beginning in September) were 29, 22, and 32 cents higher than they were in the same months of 1962.

Handler representatives at the hearing opposed the proposed Class I price increase. They cited the higher Class I prices and uniform prices to producers this year compared to last and contended that present milk supplies are adequate and that the adequacy for future periods is not endangered. They argued that the supply-demand adjustment in the order had provided and would tend to provide ample adjustments in price to offset the effect of drought on the availability of supply. They also stressed the need to maintain proper inter-market Class I price alignment. Particularly, they were concerned with their competitive sales relationships with handlers regulated under the Indianapolis and Suburban St. Louis Federal orders.

Sales areas of Indianapolis and Louisville-Lexington-Evansville handlers overlap. Class I packaged products from the Indianapolis market are regularly sold in the cities of Louisville and Evansville, as well as other parts of the marketing area. On the other hand, fluid milk products priced under Order 46 also move

into the Indianapolis market on a regular basis.

Under the Indianapolis order Class I pricing the Class I price differential over the basic formula price is \$1.27, which is 2 cents lower than the corresponding pricing factor in this market. Both orders use a level Class I price differential for the entire year. No supply-demand adjuster applies under the Indianapolis order. The Louisville-Lexington-Evansville Class I price exceeded the Indianapolis Class I price 28 cents in September, 29 cents in October, and 26 cents in November 1963.

Producers also expressed concern for maintenance of proper price relationships with the Indianapolis order. In a concurrent decision on the Indianapolis order with respect to a proposed emergency Class I price increase similar to that proposed for this market, the price increase is denied.³ It is concluded that a significant increase in the Class I price for the Louisville-Lexington-Evansville order relative to the Class I price for the Indianapolis market would disturb the present price relationship between the two markets to such extent that it would disrupt the orderly marketing of milk in both marketing areas.

Substantial milk distribution in the Illinois area is made by Order No. 46 handlers located in the Western part of the marketing area. In the Illinois area these handlers are in competition with milk priced under the Suburban St. Louis Federal order. Louisville-Lexington-Evansville handlers directly involved in the competitive sales relationships described urged that no action be taken by the Secretary to widen the inter-market price relationship between the Louisville-Lexington-Evansville and the Suburban St. Louis markets.

During September, October and November this year, the Louisville-Lexington-Evansville Class I price exceeded the Suburban St. Louis Class I price by 25, 26 and 19 cents per hundredweight, respectively. Beginning in December and through February, the ordinary seasonal factor in the Suburban St. Louis order Class I price is 20 cents lower than in the September-November period, and in March a further seasonal reduction of 20 cents ordinarily applies. Pursuant to an amendment effective for the latter half of November 1963 and through March 1964, Class I prices which would otherwise apply under the Suburban St. Louis order are increased 10 cents per hundredweight.

2. Emergency action. The due and timely execution of the function of the Secretary under the Act imperatively and unavoidably requires the omission of a recommended decision and opportunity for filing exceptions thereto, on the above issues.

Interested parties in the Louisville-Lexington-Evansville market should be advised promptly that the request is denied.

The notice of hearing stated that consideration would be given to the economic and emergency marketing condi-

² Reference is made to the decision of the Assistant Secretary, Nov. 8, 1963, on proposed amendments to orders regulating the handling of milk in the Suburban St. Louis marketing area and certain other marketing areas (28 F.R. 12167), of which official notice was taken on the record.

³ Based on hearing held Nov. 20, 1963, at Columbus, Ohio, and pursuant to notice issued Nov. 16, 1963 (28 F.R. 12226).

PROPOSED RULE MAKING

tions relating to the proposed amendments. Action under the procedure described above was requested by proponents at the hearing.

It is therefore found that good cause exists for omission of the recommended decision and the opportunity for filing exceptions thereto.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Termination of proceedings. It is hereby found and determined, on the basis of the findings and conclusions and rulings relating to the material issues of record, that this proceeding with respect to the proposed amendment to the order is hereby terminated.

Effective date. Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on December 17, 1963.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 63-13171; Filed, Dec. 19, 1963;
8:47 a.m.]

Notices

CIVIL AERONAUTICS BOARD

[Docket 14467]

S. A. EMPRESA DE VIACAO AEREA RIO GRANDENSE (VARIG)

Notice of Postponement of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the above-entitled matter now assigned for January 15 is postponed to January 22, 1964, 10 a.m. e.s.t., Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the Board.

Dated at Washington, D.C., December 16, 1963.

[SEAL]

FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 63-13188; Filed, Dec. 19, 1963;
8:49 a.m.]

[Docket Nos. 14847 etc.; Order No. E-20270]

SOUTH PACIFIC AIR LINES AND PAN AMERICAN WORLD AIRWAYS, INC.

Order Granting Interim Relief and Consolidation and Setting Hearing

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 16th day of December 1963.

Application of South Pacific Air Lines and Pan American World Airways, Inc., Docket 14847; for approval of a Purchase and Transfer Agreement (Route 115); application of South Pacific Air Lines and Pan American World Airways, Inc., Docket 14761; for approval of a Lease Agreement and operations thereunder and for exemption authority; application of Pan American World Airways, Inc., Docket 14848; for amendment of SPAL's Route 115 certificate.

By joint application filed November 4, 1963 (Docket 14847) Pan American World Airways, Inc. (Pan American) and South Pacific Air Lines (SPAL) request approval of a "Purchase and Transfer Agreement" together with a request for expeditious consideration. Under the terms of the transfer agreement dated November 1, 1963, SPAL has agreed, subject to Board and Presidential approval, to sell the operating rights contained in its Route 115 certificate to Pan American, together with certain other assets.¹

¹ The agreement shall be referred to hereafter as the "transfer agreement."

² SPAL is authorized under its Route 115 certificate to provide air transportation services between Hawaii and Fiji via the intermediates Christmas Island, the Society Islands (Tahiti), and American and Western Samoa. SPAL has held Hawaii-Tahiti authority since 1953 (17 C.A.B. 762) and these rights were expanded and renewed for a five-year period terminating July 26, 1966, in the Transpacific Route Case. Order E-16286, dated January 18, 1961. Pan American is authorized under its Route 130 to

In consideration therefor, Pan American will pay 50 percent of its net profits, if any, derived from operations over the route for the first ten year period; 10 percent of its net profits if any, from such operations during the next ten year period; and the fair market value of the properties referred to in footnote 3, below.

Approval of the transfer agreement is requested pursuant to sections 401, 408, 412, 801 and any other sections of the Federal Aviation Act as may be applicable.

By concurrent application filed in Docket 14848, Pan American requests, contingent upon approval of the transfer of SPAL's Route 115 authority to Pan American, amendment of said certificate to make permanent the authority contained therein or renewal of said authority for a minimum period of twenty years from the date of transfer.

By a separate joint application filed in Docket 14761 on September 18, 1963, as amended November 14, 1963, SPAL and Pan American request approval under section 412 of a lease agreement, and any exemptions that may be required to permit operations thereunder, for an interim period pending final disposition of the transfer agreement filed in Docket 14847. Under the lease agreement, SPAL is to lease its operating rights over Route 115 to Pan American during the interim period pending final Board disposition of the transfer agreement. Pan American—which will provide the aircraft, crews and will otherwise have complete control over the operation—is to pay SPAL a specified percentage of its net profits, if any, derived from the operations over the route during the duration of the lease.²

provide service between West Coast terminals and various points throughout the Pacific area, including Hawaii, American Samoa, Fiji, New Caledonia, New Zealand and Australia. In addition, Pan American was recently certificated to serve between the U.S.-Mainland and Tahiti. Order E-20181, served November 12, 1963 in the Re-opened Transpacific Route Case (U.S. Mainland-Tahiti Portion), Docket 7723, et al.

"(c) All SPAL property located in Papeete except aircraft equipment." Transfer Agreement, p. 3.

⁴ The original application filed in Docket 14761 requested approval of the lease, and any necessary exemptions to permit operations thereunder, for a possible 20-year period. However, after the transfer agreement was filed, the carriers amended the lease application so as to seek approval and concomitant exemption authority merely for an interim period pending final disposition of the transfer agreement.

⁵ The lease, like the transfer agreement, provides that Pan American will pay SPAL 50 percent of the profits derived from the route, if any, during the first 10-year period, and 10 percent of such profits, if any, during the next ten year period. While the lease agreement thus appears still to provide for operations for a protracted period, the lease itself was not amended in this respect, nor was such an amendment required, since it terminates by its terms upon withdrawal of Board approval or at such time as SPAL's certificate ceases to become effective.

In support of the application for approval of the transfer agreement, the applicants allege, among other things, that SPAL pioneered and developed the Tahiti-Honolulu market with piston aircraft at considerable cost in the face of jet competition from the French carrier, TAI, which, unlike SPAL, possesses authority between Tahiti and the United States mainland; that despite the fact that SPAL now carries approximately 50 percent of the Honolulu-Tahiti traffic, due to the fact it does not possess authority to serve the U.S. mainland it is unable to maintain profitable operations; that the Tahiti-Honolulu route standing alone will not support economical jet utilization; that SPAL's application for extension to the U.S. mainland has not yet been decided;⁶ that Pan American can operate the route in conjunction with its Route 130 and thus will be able to conduct mainland-Tahiti service with jet equipment and thereby strengthen the American flag competitive position.⁷

In support of its contingent application for amendment of the Route 115 certificate to make permanent the authority contained therein, or for renewal of said authority for a minimum period of 20 years, Pan American alleges, among other things, that previous determinations to limit the duration of Route 115 authority appear to reflect the usual temporary periods accorded new services by a new carrier and not any reservations as to the need for the route; that in view of Pan American's long record of successful pioneering, there can be no doubt as to its ability to implement the authorization; and that therefore, there appears to be no reason for not making the authorization permanent under these conditions.

The same general public interest arguments relied upon by the applicants in support of their application for approval of the transfer agreement are advanced in support of their application for interim approval of the lease. As additional reasons in support of such relief⁸

⁶ The Board's decision in the Reopened Transpacific Route Case (U.S. Mainland-Tahiti Portion), Docket 7723, et al. was issued subsequent to the filing of the subject application. Order E-20181, served November 12, 1963. The Board therein selected Pan American over SPAL to provide single-plane service between the U.S. mainland and Tahiti. While Pan American now possesses mainland-Tahiti authority, it does not have authority to serve between Honolulu and Tahiti.

⁷ The application for interim relief, as well as the later-filed application for approval of the transfer agreement, state that Pan American proposes at the outset to operate twice-weekly roundtrip schedules between Honolulu and Papeete with Boeing 707 or DC-8 equipment.

⁸ Applicants concede that the lease agreement falls within section 412, but question whether such a lease involves sections 401 or 408. In any event, the applicants contend that interim exemptions from such sections are warranted so as to permit immediate operations under the lease should the Board conclude that such sections are applicable. As discussed below, we have concluded that

applicants contend that SPAL faces serious problems in continuing operations over its route for an indefinite period while the Board and President act on the applications for approval of the transfer. Three of the four engines on its leased 1049-A Constellation will run out of maintenance time in late December and will require an expenditure of \$80,000 for engines. SPAL anticipates a further operating loss of \$100,000 to \$200,000 over the next six months. Such losses will impair its ability to advertise, which will affect 1964 revenues. SPAL has only one crew, which is virtually impossible to replace under the circumstances should it seek other employment. Further, the applicants allege that various SPAL leases are scheduled to expire in the near future. They submit that immediate authorization of operations by Pan American is desirable so that the momentum which SPAL has achieved in penetrating the market will not be lost, and so that promotional and other beneficial expenses which SPAL is financially unable to meet may be borne by Pan American.

Finally, applicants allege that even if the interim lease operation is permitted, there is urgent need for prompt disposition of the application for approval of the transfer agreement. In support of their request for expedition, applicants contend that until the parties know their ultimate rights and obligations, they will largely be forced to improvise on a day-to-day basis in the conduct of the operation; that this involves substantial financial exposure which cannot be justified over an extended period, demands holding operations to a minimum, and prevents long range planning and promotion which are needed for sound route development; and that these factors weaken the American-flag competitive position in the area.

No answers in opposition to the applications for relief have been received.

The Board, after careful consideration of the various applications and related matters, has decided to set for prompt hearing the applications for approval of the transfer agreement and route renewal. We have also decided to approve the lease agreement under section 412, and grant Pan American the necessary exemptions to conduct operations thereunder, for an interim period pending final decision in the hearing proceeding.⁹

After an assessment of the arguments advanced in the pleadings and upon the basis of our own independent analysis of the carrier reports filed with the Board, we conclude tentatively that the transfer of SPAL's Route 115 certificate to Pan American, upon appropriate terms and conditions, would be consistent with the

public interest within the meaning of section 401(h) of the Act, and, further, that the public convenience and necessity require, and the Board should order, such certificate be amended so as to make the authority conferred therein of indefinite duration. The Board's basic tentative conclusions are predicated on its provisional findings set forth below.

After a full evidentiary hearing, SPAL's operating authority was renewed for an additional five-year period,¹⁰ and the carrier, despite jet competition and the lack of U.S. mainland support, still managed to average approximately 2,700 passengers annually on its twice-weekly round trip service between Honolulu and Papeete.¹¹ These facts lead the Board to conclude that there is a present public need for the services authorized by SPAL's certificate. However, SPAL has shown considerable losses during the last few years and carries a negative stockholder's equity of \$2.8 million.¹² Faced with jet competition by TAI which provides direct service to the U.S. mainland,¹³ and with the mainland-Tahiti service which we have now authorized Pan American to provide, there appears to be little likelihood that SPAL, which already is in financial trouble, can reverse its loss trend or effectuate a meaningful improvement in service. The facts now at hand suggest that SPAL is a financially weak carrier without the present capabilities or prospects to provide profitable and adequate service with modern jet aircraft and thus, is not in a position to continue to compete effectively with its foreign flag competitor, TAI, in the Honolulu-Tahiti market.

Pan American, on the other hand, which already possesses U.S. mainland-Honolulu authority, and has recently been certificated for direct mainland-Tahiti service, is in a position to operate the route with jet equipment and, therefore, could compete with TAI on a more equal basis. Pan American proposes initially to operate two weekly jet round trips between Honolulu and Papeete. While the data at hand do not permit assessment of the profitability to Pan American, SPAL's route appears to integrate well with Pan American's mainland-Honolulu-South Pacific services and it thus appears that the carrier need only divert some of its flights via Tahiti to capture, at the very least, the revenues which SPAL earned, without the expense of separate flights. Pan American is in a position to absorb any short-term losses and to expend the necessary funds on promotion and development. Consequently, it appears that the replacement of SPAL by Pan American should

strengthen the American flag competitive position in the area and would be consistent with the national and public interest. Since no other U.S. flag carrier operates, or is certificated to operate, between the points covered by the transfer agreement, there is no possibility of an approval of the agreement having an adverse effect on any other carrier.¹⁴

Since it appears that there is a public need for the services authorized by SPAL's certificate and we have no doubt as to Pan American's fitness, willingness, and ability to provide such services, the Board is of the tentative view that the public convenience and necessity would be best served by amending the Route 115 certificate so as to make the authority contained therein of indefinite duration.

The above provisional findings and conclusions should serve as the focal point for the trial of this proceeding. This should restrict the hearing to relevant and material facts and minimize procedural delay. In view of the need for a prompt resolution of the issues herein set forth, the Board is ordering the matter set down for an expedited hearing.

We turn next to the request for approval of the lease agreement, and any necessary exemptions to permit operations thereunder, for an interim period pending final disposition of the transfer agreement.¹⁵ We conclude that such relief is warranted under the circumstances.

It is clear that implementation of the lease pending final disposition of the transfer agreement will not adversely affect any other U.S. flag carrier. It is equally clear that continued and uninterrupted operations over SPAL's routes by a U.S. flag carrier is affirmatively in the public interest. SPAL has but one operable aircraft, and is clearly not in a position to continue to absorb the losses attributable to its operations. It thus appears that services over the routes will either be curtailed or abandoned unless affirmative steps are taken immediately to assure continuation of these needed services.

⁹ We note from the terms of the transfer agreement and the amendment to the exemption application that Pan American is willing to accept, with one modification, imposition of the United-Capital labor protective provisions as a condition to the transfer to it of SPAL's certificate. We tentatively find that such labor provisions, with the noted modification, are fair and adequate to protect the interests of the employees involved in this instance, and further, that such labor protective provisions should be imposed as a condition to approval of the transfer. By a document filed November 22, 1963 the employees signified their acceptance of this arrangement.

¹⁵ The agreement of lease clearly falls within section 412 of the Act. The Board further finds that Pan American's lease of all of SPAL's operating rights involves a lease of a substantial part of SPAL's properties within the meaning of section 408 under the particular circumstances present here. In addition, since Pan American, under the terms of the lease, will supply the aircraft and crews, and will otherwise have complete control of the operations over SPAL's routes, the Board finds that section 401 is applicable. See Pan American-Panagra Agreement Case 8 CAB 50, 53-4 (1947).

¹⁰ Transpacific Route Case, Docket 7723 et al., Order E-16286, cited supra note 2.

¹¹ See Appendix to this order. SPAL is now providing one weekly round trip with 1049-A equipment.

¹² SPAL's net losses since inaugurating service are as follows:

1960 (9 months)-----	\$925,519
1961-----	721,026
1962-----	851,060
1963 (first 6 months)-----	369,272

¹³ TAI operates three jet round trips Los Angeles-Papeete every two weeks and one jet round trip Honolulu-Papeete every other week. Official Airline Guide, November 1963.

sections 401 and 408 are applicable to this lease, and that Pan American should be exempted therefrom pending final action on the transfer agreement and route renewal application.

⁹ As part of this hearing we wish to consider whether the financial terms and conditions of the transfer agreement are consistent with the public interest and, if not, what terms and conditions the Board should impose as conditions to approval of the agreement.

SELECTED FINANCIAL AND CAPACITY DATA SOUTH PACIFIC AIR LINES

1960 TO DATE

	1 1960	1961	1962	Year ending June 30, 1963	6 months 1963
Operating revenues.....	\$473,839	\$640,128	\$463,259	\$565,968	\$274,648
Operating expenses.....	1,375,354	1,301,553	1,202,668	1,201,149	572,875
Net Loss.....	925,519	721,026	851,060	799,761	369,272
Total assets.....	200,650	280,363	495,069	384,822	-----
Net Worth (stockholder's equity).....	² 815,819	² 1,571,544	² 2,422,605	² 2,791,876	-----
Passengers carried.....	1,688	2,476	3,103	3,170	1,470
Revenue passenger miles (000).....	4,498	6,747	7,555	9,131	4,015
Available seat miles (000).....	11,820	16,819	19,556	19,454	8,064
Passenger load factor.....	38.1	40.1	38.6	46.9	49.8

¹ Operations inaugurated Apr. 1960.² Denotes negative amount.

[F.R. Doc. 63-13189; Filed, Dec. 19, 1963; 8:49 a.m.]

[Docket 14092]

WESTERN ALASKA AIRLINES, INC.,
RENEWAL

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on January 16, 1964, at 10 a.m., e.s.t., in Room 725, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Merritt F. Ruhlen.

Dated at Washington, D.C., December 16, 1963.

[SEAL]

FRANCIS W. BROWN,
Chief Examiner.[F.R. Doc. 63-13190; Filed, Dec. 19, 1963;
8:49 a.m.]

FEDERAL POWER COMMISSION

[Project No. 2409]

CALAVERAS COUNTY WATER
DISTRICTAmended Notice of Application for
License

DECEMBER 17, 1963.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Calaveras County Water District (correspondence to: Paul E. Lewis, Secretary-Manager, Calaveras County Water District, P.O. Box 846, San Andreas, California) for license for the initial stage of proposed Project No. 2409, known as the North Fork Stanislaus River Project, to be located on North Fork Stanislaus River, in Calaveras, Alpine and Tuolumne Counties, California, near the towns of Sonora and San Andreas, and affecting lands of the United States within the Stanislaus National Forest.

The initial stage of the proposed project consists of: Spicer Meadow Dam and Reservoir—A rock fill dam 220 feet high on Highland Creek, immediately downstream of the existing dam, will enlarge Spicer Meadow Reservoir to 130,000 acre-foot capacity. Releases will be made for maximum power production at proposed plants downstream; Big Trees Development—A rock fill dam 400 feet high on North Fork Stanislaus River, approximately 2 miles below Boards Crossing, will form a 162,000 acre-foot reservoir

with normal maximum water surface elevation of 4,136 feet M.S.L.; Upper Beaver Creek Diversion Dam—a 60-foot high combination rock fill and concrete gravity dam on Beaver Creek will divert water to Big Trees Reservoir through a canal about one mile long. A 14 foot 6 inch diameter tunnel will convey water from Big Trees Reservoir to Big Trees Powerhouse approximately two miles downstream. The powerhouse will contain one Francis turbine driving a generator with a nameplate capacity of 50,000 kw; and Collierville Development—Squaw Hollow Dam, a concrete arch 150 feet high with center overflow spillway, on North Fork Stanislaus River approximately one mile below Big Trees Powerhouse, will create a 2,000 acre-feet capacity reservoir. Lower Beaver Creek Diversion Dam, a concrete gravity structure approximately 15 feet high, will divert water to Squaw Hollow Reservoir through a 7-foot diameter tunnel. The dam and tunnel will be an enlargement of the existing Utica system diversion works of the Pacific Gas and Electric Company. Murphy's Tunnel, approximately 40,000 feet long, will convey water from Squaw Hollow Reservoir to Collierville Powerhouse at Clarks Flat below the confluence of the North and Middle Forks Stanislaus River. Initial installation will consist of two impulse turbines driving generating units with a total installed generating capacity of 115,000 kw.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is January 22, 1964. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.[F.R. Doc. 63-13178; Filed, Dec. 19, 1963;
8:48 a.m.]

[Docket No. CP64-9]

EL PASO NATURAL GAS CO.

Notice of Application

DECEMBER 16, 1963.

Take notice that on July 16, 1963, as supplemented on September 9 and November 5, 1963, El Paso Natural Gas

Upon the basis of the foregoing, the Board concludes that the lease agreement is not adverse to the public interest or in violation of the Act within the meaning of section 412. These same factors, together with the fact that the authority conferred herein is of a limited duration and that SPAL's demise appears imminent, warrant the grant to Pan American of an exemption under section 416 from sections 401 and 408 of the Act to the extent necessary to enable it to conduct the operations under the lease agreement. Such approval and exemptions shall terminate upon final decision by the Board in the proceeding herein.

In consideration of the foregoing, the Board finds that the amended agreement of lease filed in Docket 14761 is not adverse to the public interest or in violation of the Act, and further, that the enforcement of sections 401 and 408 of the Federal Aviation Act of 1958, as amended, insofar as it would prevent Pan American from conducting operations under the lease agreement filed in Docket 14761 for an interim period pending final Board decision, would be an undue burden on Pan American by reason of the limited extent of, and unusual circumstances affecting, the proposed interim operations and is not in the public interest.

Accordingly, it is ordered:

1. That the applications of SPAL and Pan American in Dockets 14847 and 14848 be and they hereby are consolidated for hearing in a proceeding to be known as the South Pacific-Pan American Route Transfer Case, which shall be set for prompt hearing before an Examiner of the Board at a time and place to be hereafter determined;

2. That Pan American World Airways, Inc. and South Pacific Air Lines are hereby made parties to this proceeding;

3. That copies of this order shall be served on the parties designated in Paragraph 2 and the Department of State and Department of the Interior;

4. That persons seeking intervention herein are directed to file petitions within 15 days from the date of service of this order; and

5. That the agreement of lease filed in Docket 14761 be and it hereby is approved under section 412 of the Act, and Pan American World Airways, Inc. be and it hereby is exempted pursuant to section 416(b) of the Act from the provisions of sections 401 and 408 of the Act to the extent necessary to permit it to conduct the operations under that lease. *Provided* That such approval and exemption shall terminate upon the date of effectiveness of the final Board decision in the proceeding herein.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.¹⁶[SEAL] HAROLD R. SANDERSON,
Secretary.

¹⁶ Murphy, Vice Chairman, not participating.

Company (Applicant) filed in Docket No. CP64-9 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing:

(a) The increase of horsepower at its Jal No. 4 gasoline plant in Lea County, New Mexico from the present 9,450 hp. to a total of 11,210 hp.;

(b) The operation of the existing intrastate gathering Trunk Lines L and M serving the Jal gasoline plant Nos. 3 and 4, as interstate facilities;

(c) The construction and operation of 2.6 miles of 16-inch pipeline in conjunction with the additional compressor facilities and a 17-mile segment of the existing and certificated 16-inch gathering Trunk Line A, now serving the Jal No. 1 gasoline plant,

all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The cost of the additional facilities is estimated to be \$611,000.

Take further notice that preliminary staff analysis has indicated that there are no problems which would warrant a recommendation that the Commission designate this application for formal hearing before an examiner and that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing may be held without further notice before the Commission on this application provided no protest or petition to intervene is filed within the time required herein. Where a protest or petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C., 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 3, 1964.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-13179; Filed, Dec. 19, 1963;
8:48 a.m.]

[Docket No. RP61-21]

MISSISSIPPI RIVER FUEL CORP.

Order Prescribing Hearing Procedures

DECEMBER 16, 1963.

The Commission by order issued March 24, 1961, suspended the effectiveness of and provided for hearing on the lawfulness of the rates, charges, classifications and services contained in Mississippi River Fuel Corporation's (Fuel) FPC Gas Tariff, Original Volume No. 1 as proposed to be amended by Sixth Revised Sheet No. 4 tendered for filing by Fuel on February 24, 1961.

Conferences to settle the subject docket were held on the following dates: September 7, 1961; October 30 to November 5, 1962 and December 19-20, 1962. In each of these instances the efforts to dispose of this case proved abortive. By

letter dated May 9, 1963, Fuel requested further deferral for setting the time for hearing of the proceeding in this docket.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act, that for the purposes set out in paragraph (A) of the order issued March 24, 1961, in this docket, the disposition of this proceeding be in accordance with the procedures set out below.

The Commission orders:

(A) Presiding Examiner Harry W. Frazee, or any other officer, or officers of the Commission designated by it for that purpose, shall preside at the prehearing conference and the hearing in this matter pursuant to the Commission's rules of practice and procedure.

(B) Fuel, on or before January 7, 1964, shall serve upon the Commission staff, and all parties to this proceeding copies of its testimony and exhibits constituting its case-in-chief in this proceeding.

(C) The Commission staff and all parties to this proceeding proposing to present evidence herein, shall serve such testimony and exhibits on all parties on or before January 21, 1964.

(D) Pursuant to the provisions of § 1.18 of the Commission's rules of practice and procedure, a prehearing conference before the Presiding Examiner herein designated shall commence at 10:00 a.m., e.s.t., on January 29, 1964, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., 20426, for the purpose of effectuating the disposition of this proceeding.

(E) Upon determination of the issues to be eliminated by stipulation, the facts to be agreed upon and the method for eventual disposition of this proceeding, the Presiding Examiner shall, if necessary, set the date for service of Fuel's rebuttal case and shall, if necessary, give notice of immediate hearing following service of Fuel's rebuttal case for purposes of cross-examination on the issues to be tried, such hearing to be continuous until conclusion.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 63-13180; Filed, Dec. 19, 1963;
8:48 a.m.]

[Docket No. G-19417 etc.]

PAN AMERICAN PETROLEUM CORP., ET AL.

Order Consolidating Proceedings and Fixing Date for Prehearing Conference

DECEMBER 12, 1963.

Pan American Petroleum Corp., Docket No. G-19417; Edwin L. Cox, Docket No. CI61-153; Robert A. Hefner, Jr., et al., Docket No. CI61-393; Pan American Petroleum Corp., Docket No. CI61-516; Shell Oil Company (Operator), et al., Docket No. CI61-524; Westheimer-Neustadt Corporation, Docket No. CI61-531; Jerome M. Westheimer, et al., Docket No. CI61-554; Forest Oil Corporation, Docket No. CI61-584; The Atlan-

tic Refining Company, Docket No. CI61-752; Roland S. Bond, Docket No. CI61-804; Socony Mobil Oil Company, Inc. (Operator), et al., Docket No. CI61-1024; Ray Ryan, et al., Docket No. CI61-1087; Socony Mobil Oil Company, Inc., Docket No. CI61-1244; Union Texas Petroleum, A Division of Allied Chemical Corporation, et al., Docket No. CI61-1275; Socony Mobil Oil Company, Inc. (Operator), et al., Docket No. CI61-1281; Edwin L. Cox, Docket No. CI61-1308; Union Oil Company of California (Operator), et al., Docket No. CI61-1620; Pan American Petroleum Corporation, Docket No. CI61-1772; Humble Oil & Refining Company, Docket No. CI61-1796; Tam Oil, Inc., Docket No. CI62-27; Sam K. Viersen, Docket No. CI62-90; Mack Oil Company (Operator), et al., Docket No. CI62-273; Edwin L. Cox, Docket No. CI62-471; Continental Oil Company, Docket No. CI62-1100; J. I. Goins, et al., Docket No. CI62-1392; The Hefner Company, Docket No. CI62-1500; The Atlantic Refining Company, Docket No. CI62-1511; Global Oils, Inc. (Operator), et al., Docket No. CI63-96; The Pure Oil Company, Docket No. CI63-148; Forest Oil Corporation, Docket No. CI63-265; Pan American Petroleum Corporation, Docket No. CI63-286; Pan American Petroleum Corporation, Docket No. CI63-328; Pan American Petroleum Corporation, Docket No. CI63-336; Pan American Petroleum Corporation, Docket No. CI63-337; Marathon Oil Company, Docket No. CI63-356; Keener Oil Company, Docket No. CI63-381; Sam K. Viersen, Jr., Docket No. CI63-392; Calvert Exploration Company (Operator), et al., Docket No. CI63-393; Gulf Oil Corporation (Operator), et al., Docket No. CI63-417; Gulf Oil Corporation (Operator), et al., Docket No. CI63-459; Phillips Petroleum Company, Docket No. CI63-462; Humble Oil & Refining Company, Docket No. CI63-575; Phillips Petroleum Company (Operator), et al., Docket No. CI63-583; Socony Mobil Oil Company, Inc., Docket No. CI63-615; Cities Service Oil Company, Docket No. CI63-647; Texoma Production Company, Docket No. CI63-1042; C. L. McManon, Jr., et al., Docket No. CI63-690; Apache Corporation, Docket No. CI63-787; Petroleum Incorporated (Operator), et al., Docket No. CI63-797; Tidewater Oil Company, Docket No. CI63-876; J. A. Chapman, Docket No. CI63-936; Hall-Jones No. 4, et al., Docket No. CI63-985; Tidewater Oil Company, Docket No. CI63-1009; Sinclair Oil & Gas Company, Docket No. CI63-1025; Sinclair Oil & Gas Company, Docket No. CI63-1026; Marathon Oil Company, Docket No. CI63-1086; Gulf Oil Corporation, Docket No. CI63-1125; Gulf Oil Corporation, Docket No. CI63-1129; Gulf Oil Corporation, Docket No. CI63-1152; Crescent Oil & Gas Corporation, Docket No. CI63-1230; Union Oil Company of California, Docket No. CI63-1241; Eason Oil Company, Docket No. CI63-1276; Apache Corporation, Docket No. CI63-1394; Forest Oil Corporation, et al., Docket No. CI63-1398; Sun Oil Company, Docket No. CI63-1427; Cleary Petroleum, Inc. (Operator), et al., Docket No. CI63-1461; W. C. Pickens,

Docket No. CI63-1476; The Atlantic Refining Company, Docket No. CI63-1491; Joe A. Humphrey, Docket No. CI63-1519; Edwin L. Cox, Docket No. CI63-1574; W. Ray Wallace, Docket No. CI63-1584; Marathon Oil Company, Docket No. CI63-1585; Pan American Petroleum Corporation, Docket No. CI64-23; Robert P. Lammerts, Docket No. CI64-28; Eason Oil Company, Docket No. CI64-65; Pan American Petroleum Corporation, Docket No. CI64-67; Global Oils, Inc., Docket No. CI64-109; Roland S. Bond, Docket No. CI64-121; Ashland Oil & Refining Company, Docket No. CI64-159; Carl E. Gungoll & Henry H. Gungoll, Docket No. CI64-181; Gulf Oil Corporation, Docket No. CI64-208; Petroleum Inc. (Operator), et al., Docket No. CI64-361.

Each of the above-captioned proceedings concerns an application for a certificate of public convenience and necessity (or an application to amend a certificate by adding acreage) filed under Section 7 of the Natural Gas Act to sell natural gas produced in the State of Oklahoma (Counties of Love, Major, Woods, Dewey, Bryan, Custer, Carter, Stephens, Alfalfa, Caddo, Grady, Beckham, Blaine, Kingfisher, and Garfield) for resale in interstate commerce, all as more fully described in the appendix attached hereto and in the respective ap-

plications (and supplements or amendments thereto) which are on file with the Commission and open to public inspection.

The Commission finds:

(1) It is appropriate and in the public interest that the above-captioned matters be consolidated for hearing and decision as hereinafter ordered.

(2) The expeditious disposition of these proceedings may be effectuated by holding a prehearing conference and to that end a prehearing conference should be held on January 22, 1964, as herein after ordered.

The Commission orders:

(A) The above-captioned matters are hereby consolidated for the purposes of hearing and decision.

(B) Pursuant to the provisions of § 1.18 of the Commission's rules of practice and procedure, a prehearing conference before a duly designated presiding examiner shall commence at 10:00 a.m., e.s.t., on January 22, 1964, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., for the purpose of effectuating the expeditious disposition of these consolidated proceedings.

(C) The purpose of such conference shall be to consider all matters at issue in the above dockets, the manner in which evidence shall be presented, to fix

dates for the distribution of such evidence, to fix the date on which the consolidated hearing shall commence, and to consider any and all matters which might contribute to an expeditious disposition of these consolidated proceedings.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held on a date to be fixed by the presiding examiner in accordance with paragraph (D) above, in a hearing room of the Federal Power Commission, 441 G Street, NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications.

(E) Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 6, 1964. Protestants and Petitioners shall state with particularity the dockets in which they claim to have an interest.

By the Commission.

[SEAL]

JOSEPH H. GUTRIDE,
Secretary.

Docket Nos.	Applicant	Field and county	Purchaser	Rate schedule number and original contract date	Proposed initial rate cents/Mcf at 14.65 psia	Initial rate under temporary authority cents/Mcf at 14.65	Comments
G-19417	Pan American Petroleum Corp.	West Enville, Love	Cimarron Transmission Co.	277 (7-20-59)	15.5	15.5	Subject to refund to 15.0 cents.
CI61-153	Edwin L. Cox	do	do	31 (10-17-58)	15.5	15.5	Ratification 7-20-60.
CI61-393	Robert A. Hefner, Jr., et al.	do	do	1 (10-17-58)	15.5	15.0	Ratification 8-19-60.
CI61-516*	Pan American Petroleum Corp.	Woodward Area, ² Dewey, Major and Woods.	Michigan Wisconsin Pipe Line Co.	330 (8-25-60)	19.5	15.0	*Motions to amend original certificate.
CI61-524*	Shell Oil Company (Operator), et al.	Woodward Area, ² Alfalfa, Dewey, Major and Woods.	do	268 (8-24-60)	19.5	15.0	*Motion to amend original certificate filed 10-12-62.
CI61-531	Westheimer Newstadt Corp.	West Enville, Love	Cimarron Transmission Co.	2 (10-17-58)	15.5	15.0	Ratification 8-1-60.
CI61-554	Jerome M. Westheimer, et al.	do	do	1 (10-17-58)	15.5	15.0	Ratification 10-3-60.
CI61-584	Forest Oil Corp.	do	do	24 (10-17-58)	15.5	15.0	Ratification 8-2-60.
CI61-752*	The Atlantic Refining Co.	West Valley Center, Dewey, ²	Michigan Wisconsin Pipe Line Co.	225 (10-1-60)	19.5	15.0	Motion to amend original certificate filed 9-10-62.
CI61-804	Roland S. Bond	East Durant, Bryan	Lone Star Gas Co.	2 (8-5-60)	16.8	15.0	
CI61-1024	Socony Mobil Gas Co., Inc. (Operator), et al.	North Custer City, Custer	Natural Gas Pipeline Co. of America.	266 (10-1-60)	19.95	15.0	Subject to refund to rate determination in CI61-1024.
CI61-1087	Ray Ryan and Ray Ryan Oil Co.	East Durant, Bryan	Lone Star Gas Co.	1 (7-18-60)	16.8	15.0	
CI61-1244	Socony Mobil Oil Co., Inc.	Selling, Major	Panhandle Eastern Pipeline Co.	325 (10-25-60)	17.0	15.0	
CI61-1275	Union Texas Petroleum, a Division of Allied Chemical Corp., et al.	North Custer City, Custer	Natural Gas Pipeline Co. of America.	60 (10-1-60)	19.95	15.0	Subject to refund to 15.0 cents.
CI61-1281	Socony Mobil Oil Co., Inc.	Cedardale, ² Dewey and Major.	Michigan Wisconsin Pipe Line Co.	322 (1-18-61)	19.5	15.0	
CI61-1308	Edwin L. Cox	West Enville, Love	Cimarron Transmission Co.	36 (10-17-58)	15.5	15.0	Ratification 2-6-61.
CI61-1620*	Union Oil Co. of California (Operator), et al.	Putnam, Dewey	Natural Gas Pipeline Co. of America.	58 (4-1-61)	17.85	15.0	Motion to amend original certificate filed 8-30-62. Ratification 7-10-62.
CI61-1772	Pan American Petroleum Corp.	Southeast Durant, Bryan	Lone Star Gas Co.	310 (5-16-61)	16.8	15.0	
CI61-1796	Humble Oil Refining Co.	Joiner City Plant, Carter	Natural Gas Pipeline Co. of America.	278 (5-18-61)	17.0	15.0	
CI62-27	Tam Oil, Inc.	East Durant, Bryan	Lone Star Gas Co.	1 (6-20-60)	16.8	15.0	
CI62-90	Sam K. Viersen	Woodward Area, ⁴ Major	Michigan Wisconsin Pipe Line Co.	1 (6-23-61)	19.5	15.0	
CI62-273	Mack Oil Co. (Operator), et al.	Joiner City Plant, Carter	Natural Gas Pipeline Co. of America.	2 (6-5-61)	17.0	15.0	
CI62-471	Edwin L. Cox	East Durant, Bryan	Lone Star Gas Co.	40 (6-20-60)	16.8	15.0	Ratification 10-9-61.
CI62-1100	Continental Oil Co.	Doyle, Stephens	do	220 (12-29-61)	16.8	15.0	
CI62-1392	J. I. Goins, et al.	West Enville, Love	Cimarron Transmission Co.	1 (2-18-59)	15.5	15.5	Subject to refund to 15.0 cents.
CI62-1500	The Hefner Co.	do	do	4 (10-17-58)	15.5	15.5	Subject to refund to 15.0 cents. Ratification 5-29-62.

See footnotes at end of table.

No. 246—7

Docket Nos.	Applicant	Field and county	Purchaser	Rate schedule number and original contract date	Proposed initial rate cents/Mcf at 14.65 psia	Initial rate under temporary authority cents/Mcf at 14.65	Comments
CI62-1511	The Atlantic Refining Co.	Avard and Lenora, Dewey and Woods.	Panhandle Eastern Pipe Line Co.	264 (5-5-60)	17.0	15.0	Ratification 5-2-62.
CI63-96	Global Oils, Inc.	Woodward Area, Major	Michigan Wisconsin Pipe Line Co.	5 (5-24-62)	19.5	15.0	
CI63-148	The Pure Oil Co.	Northeast Cederdale, ² Alfalfa, Major and Woods.	do.	76 (5-11-62)	19.5	15.0	
CI63-265	Forest Oil Corp.	Woodward Area, Major	do.	27 (7-12-62)	19.5	15.0	
CI63-286	Pan American Petroleum Corp.	do	do	342 (10-14-60)	19.5	15.0	Assignment to applicant 2-1-62.
CI63-328	do	do	do	343 (10-17-60)	19.5	15.0	Assignment to applicant 10-31-60.
CI63-336	do	Woodward Area, ² Major	do	344 (10-14-60)	19.5	15.0	Allotment to applicant 1-17-61.
CI63-337	do	do	do	345 (8-24-60)	19.5	15.0	Assignment to applicant 3-30-61.
CI63-356	Marathon Oil Co.	E. Durant, Bryan	Lone Star Gas Co.	83 (6-11-62)	16.8	15.0	
CI63-381	Keener Oil Co.	Woodward Area, Dewey	Michigan Wisconsin Pipe Line Co.	6 (8-20-62)	19.5	15.0	
CI63-392	Sam K. Viersen, Jr.	do	do	1 (6-23-61)	19.5	15.0	
CI63-393	Calvert Exploration Co. (Operator), et al.	Lenora, Dewey	do	2 (8-30-62)	19.5	15.0	
CI63-417	Gulf Oil Corp. (Operator), et al.	Laverty, Caddo and Grady	Cities Service Gas Co.	1 (8-21-62)	16.8		No rate schedule filed. Temporary authority not requested.
CI63-450	do	North Oakland and Lenora, Dewey and Woods.	Michigan Wisconsin Pipe Line Co.	243 (8-8-62)	19.5	15.0	
CI63-462	Phillips Petroleum Corp.	Woodward Area, Dewey, Major and Woods.	do	388 (8-7-62)	19.5	15.0	
CI63-575	Humble Oil & Refining Co.	Woodward Area, Dewey and Major.	do	316 (9-21-62)	19.5	15.0	
CI63-583	Phillips Petroleum Co. (Operator), et al.	Woodward Area, Woods	Panhandle Eastern Pipe Line Co.	390 (5-5-60)	17.0	15.0	
CI63-615	Socony Mobil Oil Co., Inc.	Chitwood, Grady	Natural Gas Pipeline Co. of America.	323 (9-14-62)	16.8	15.0	
CI63-647	Cities Service Oil Co.	Woodward Area, Major and Woods.	Michigan Wisconsin Pipe Line Co.	162 (10-23-62)	19.5	15.0	
CI63-690	C. L. McMahon, Jr., et al.	West Enville, Love	Cimarron Transmission Co.	1 (10-17-58)	15.1	15.5	Subject to refund to 15.0 cents. Ratification 6-21-62.
CI63-787	Apache Corp.	Northwest Oakdale, Woods.	Michigan Wisconsin Pipe Line Co.	26 (11-16-62)	19.5	15.0	
CI63-797	Petroleum Inc. (Operator), et al.	West Valley Center, Dewey	do	29 (7-30-62)	19.5	15.0	
CI63-876	Tidewater Oil Co.	Laverty, Caddo and Grady	Cities Service Gas Co.	1 (12-17-62)	16.8		No rate Schedule filed. Temporary authorization not requested.
CI63-936	J. A. Chapman	Woodward Area, Major	Michigan Wisconsin Pipe Line Co.	7 (12-12-62)	19.5	15.0	
CI63-985	Hall-Jones No. 4, et al.	Putnam City, Dewey	Panhandle Eastern Pipe Line Co.	1 (2-4-63)	17.0	15.0	
CI63-1009	Tidewater Oil Co.	North Carter, Beckham	Arkansas Louisiana Gas Co.	128 (5-3-61)	17.0		Acceptance of rate schedule pending. Temporary authority not requested. Ratification 8-9-61.
CI63-1025	Sinclair Oil & Gas Co.	do	do	243 (5-3-61)	17.0	15.0	
CI63-1026	do	North Carter, Blaine	do	244 (8-25-61)	16.8	15.0	
CI63-1042	Texoma Production Co.	Woodward Area, Dewey	Michigan Wisconsin Pipe Line Co.	12 (12-28-62)	19.5	15.0	
CI63-1086	Marathon Oil Co.	do	do	84 (10-9-62)	19.5	15.0	
CI63-1125	Gulf Oil Corp.	North Cooper and Southeast Lacy, Blaine and Kingfisher.	Arkansas Louisiana Gas Co.	254 (12-30-60)	16.8	15.0	
CI63-1129	do	North Carter, Beckham	do	255 (5-3-61)	17.0	15.0	Ratification 7-20-61.
CI63-1152	do	Northwest Anthon, Custer	do	256 (7-9-63)	17.0	15.0	Ratification 10-29-62.
CI63-1230	Crescent Oil & Gas Corp.	North Cooper, Blaine	do	9 (12-30-60)	16.8	15.0	Ratification 3-4-61.
CI63-1241	Union Oil Company of Calif.	Northwest Chester, Major	Michigan Wisconsin Pipe Line Co.	77 (1-24-63)	19.5	15.0	
CI63-1276	Eason Oil Co.	Southeast Crane, Custer	Arkansas Louisiana Gas Co.	13 (10-5-62)	16.8	15.0	
CI63-1304	Apache Corp.	West Valley Center and Northeast Trail, Dewey.	Panhandle Eastern Pipe Line Co.	28 (4-8-63)	17.0	15.0	
CI63-1398	Forest Oil Corp., et al.	West Valley Center, Woods.	do	30 (5-5-60)	17.0	15.0	Ratification 1-17-63.
CI63-1427	Sun Oil Co.	North Cooper, Blaine	Arkansas Louisiana Gas Co.	158 (10-11-61)	16.8	15.0	
CI63-1461	Cleary Petroleum, Inc. (Operator), et al.	Starr, Kingfisher	do	6 (9-24-62)	16.8	15.0	
CI63-1476	W. C. Pickens	West Valley Center, Dewey	Panhandle Eastern Pipe Line Co.	2 (4-10-63)	17.0	15.0	
CI63-1491	The Atlantic Refining Co.	Northeast Trail, Dewey	do	274 (4-18-63)	17.0	15.0	
CI63-1519	Joe A. Humphrey	West Valley Center, Dewey	do	1 (4-28-63)	17.0	15.0	
CI63-1574	Edwin L. Cox	do	do	54 (4-22-63)	17.0	15.0	
CI63-1584	W. Ray Wallace	do	do	1 (5-1-63)	17.0	15.0	
CI63-1585	Marathon Oil Co.	Avard, Woods	do	85 (5-5-60)	17.0	15.0	
CI64-23	Pan American Petroleum Corp.	Starr, Kingfisher	Arkansas Louisiana Gas Co.	380 (9-24-62)	16.8	15.0	Ratification 5-13-63.
CI64-28	Robert P. Cammerts	North Cooper, Blaine	do	1 (11-21-60)	16.8	15.0	
CI64-65	Eason Oil Co.	do	do	15 (12-30-60)	16.8	15.0	Ratification 8-23-61.
CI64-67	Pan American Petroleum Corp.	do	do	381 (12-22-60)	16.8	15.0	Ratification 5-13-63.

See footnotes at end of table.

Docket Nos.	Applicant	Field and county	Purchaser	Rate schedule number and original contract date	Proposed initial rate cents/Mcf at 14.65 psia	Initial rate under temporary authority cents/Mcf at 14.65	Comments
CI64-109	Global Oil, Inc.	Northwest Oakdale, Woods.	Michigan Wisconsin Pipe Line Co.	6 (6-20-63)	\$ 19.5	\$ 15.0	
CI64-121	Roland S. Bond	do	do	3 (6-19-63)	\$ 19.5	\$ 15.0	
CI64-159	Ashland Oil & Refining Co.	Northeast Trail and West Valley Center, Dewey.	Panhandle Eastern Pipe Line Co.	153 (5-6-63)	\$ 17.0	\$ 15.0	
CI64-181	Carl E. Gungoll and Henry H. Gungoll.	Northeast Trail, Dewey.	do	3 (5-25-63)	\$ 17.0	\$ 15.0	
CI64-208	Gulf Oil Corp.	Northwest Ayard, Woods.	do	257 (5-5-60)	\$ 17.0	\$ 15.0	Ratification 3-6-63.
CI64-361	Petroleum Inc. (Operator), et al.	West Valley Center, Dewey.	do	30 (4-19-63)	\$ 17.0	\$ 15.0	

¹ To be adjusted proportionately for BTU content above or below 1,000 BTU per cubic foot, limited to a maximum upward adjustment for 1,100 BTU.

² Only that portion of the certificate application pertaining to acreage located in the Oklahoma. Other area is consolidated in this proceeding.

³ Plus reimbursement of all production, gathering, delivery, sales, severance or other excise taxes existing as of the contract date. Buyer shall also add to the base price 1/100 cent per Mcf for each additional BTU per cubic foot in excess of 1,000, up to a maximum of 1,200 BTU.

⁴ Includes Tax reimbursement. To be adjusted upward 1/100 cent per Mcf for each additional BTU per cubic foot in excess of 1,000 up to a maximum of 1,200 BTU;

or proportionately downward for gas having less than 1,000 BTU per cubic foot and subject to ultimate disposition in Docket No. R-200.

⁵ Includes Tax reimbursement. Base price to be adjusted proportionately for BTU content above or below 950 BTU per cubic foot, limited to a maximum upward adjustment for 1,150 BTU.

⁶ To be adjusted proportionately for BTU content above or below 1,000 BTU per cubic foot, limited to a maximum upward adjustment for 1,200 BTU.

⁷ To be adjusted proportionately for BTU content above or below 1,000 BTU per cubic foot, limited to a maximum upward adjustment for 1,200 BTU and subject to ultimate disposition in Docket No. R-200.

[F.R.Doc. 63-13120; Filed, Dec. 19, 1963; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 811-258]

CORPORATE TRUST SHARES

Proposal for Order Declaring Subject Company Not To Be an Investment Company

DECEMBER 16, 1963.

Notice is hereby given that the Securities and Exchange Commission proposes, pursuant to section 8(f) of the Investment Company Act of 1940 ("Act") to issue an order finding and declaring that Corporate Trust Shares ("Trust"), % The Chase Manhattan Bank, 1 Chase Manhattan Plaza, New York 15, New York, a unit investment trust registered under the Act, the Successor Trustee of which is The Chase Manhattan Bank, has ceased to be an investment company. Evidence of ownership in Trust are represented by certificates of beneficial interest ("Trust Shares") issued under a Trust Agreement executed on June 6, 1929 and dated as of January 1, 1929.

In support of said order, the Commission proposes, on the basis of information in its files, to find as follows:

Trust registered under section 8(a) of the Act by notification of registration filed November 1, 1940. No Trust Shares have been offered for sale since the date of registration under the Act.

On December 31, 1953 the Trust Agreement dated January 1, 1929 was terminated pursuant to its own terms. The right of holders of the outstanding certificates to receive in kind that portion of the underlying Stock Units and any cash or other property allocable to the outstanding Trust Shares was terminated on March 31, 1954 after which date the remaining underlying stock was required to be sold within 30 days.

The remaining shares of stock were sold within the prescribed 30 day period and the total amount of funds then available for distribution to the 262,000 Trust

Shares then outstanding amounted to \$689,708.13 or \$2.632474 per Trust Share.

The last Distribution Coupon appertaining to the Trust Shares became due on December 31, 1953. A notice regarding the termination of the Trust Agreement and the pro rata distribution of all cash held under said Agreement was mailed to each person whose name appeared on the Ownership Certificate which was required to be filled out at the time each coupon matured and was presented for payment. No other action with respect to further notification that the Trust has terminated has been taken.

As of June 28, 1963 there remained 24,790 Trust Shares outstanding. Because the certificates representing the Trust Shares are in bearer form, the number of holders thereof who have not as yet surrendered such certificates for payment is unknown. The remaining funds applicable to the outstanding Trust Shares are being held in trust for payment to the holders of the outstanding Trust Share certificates upon the surrender of those certificates to the Trustee. As of June 28, 1963, the balance of such funds amounted to \$65,261.26.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission on its own motion finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than December 31, 1963, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C.,

20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon The Chase Manhattan Bank at the address stated above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after said date as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the matter herein may be issued by the Commission upon the basis of the showing contained in this notice, unless an order for hearing upon said proposal shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 63-13166; Filed, Dec. 19, 1963; 8:46 a.m.]

[File No. 812-1633]

FIRST MIDWEST CAPITAL CORP.

Application for Order Exempting Proposed Transaction From Certain Provisions

DECEMBER 16, 1963.

Notice is hereby given that First Midwest Capital Corporation ("applicant"), 704 Northstar Center, 110 South Seventh Street, Minneapolis 2, Minnesota, a Minnesota corporation, licensed under the Small Business Investment Act of 1958 ("SBI Act") and a closed-end, non-diversified, management, registered investment company has filed an application under section 17(b) of the Investment Company Act of 1940 ("Act") for an order exempting from the provisions of section 17(a) of the Act, the proposed purchase of certain securities of Westgate Drug, Inc. ("Westgate") from applicant by Ewalt, Incorporated ("Ewalt, Inc.") for \$30,000. All interested per-

sons are referred to the application filed with the Commission for a full statement of applicant's representations which are summarized below.

Applicant owns \$25,000 principal amount of Westgate 7 percent convertible debentures maturing during the years 1965 through 1970. The debentures are convertible into 2500 shares of the common stock of Westgate at the rate of one share of common stock for each \$10 principal amount of debentures. Alan K. Ruvelson, President and Director of applicant, is one of the five directors of Westgate pursuant to an agreement by Westgate that, so long as the debentures are outstanding, a designee of First Midwest will serve as one of its directors. The holders of almost all of Westgate's stock have agreed to vote their shares to fulfill their commitment. Westgate is 39 percent owned by Murray Ewalt, and Ewalt, Inc. is 100 percent owned by Murray Ewalt and his wife, and the two companies are deemed to be under common control of Murray Ewalt.

The application states that no default exists on Westgate's convertible debentures or in the terms of the purchase agreement; that Westgate is in need of additional short-term borrowings from time to time in order to maintain a current status with suppliers and adequate inventory levels; that Mr. Ewalt and Ewalt, Inc. are in a position to provide these funds; and that, as a result of discussions relative to additional financial needs of Westgate, applicant has received and tentatively accepted an offer by Ewalt, Inc. to purchase the Westgate convertible debentures for the sum of \$30,000 in cash.

Applicant further represents that it has no direct or indirect financial interest in Ewalt, Inc., that neither Ewalt, Inc. nor Murray Ewalt or his wife have a direct or indirect interest in applicant, and that neither applicant nor its directors or officers have any financial investment in Ewalt, Inc. Applicant also represents that there is no public market for the stock of Westgate and that the price to be paid was arrived at through arms-length negotiations between Ewalt, Inc. and applicant.

Pursuant to a repurchase agreement guaranteed by the stockholders of Westgate, the latter has agreed to purchase from applicant upon its request any shares of Westgate it obtains upon conversion of the debentures, at a price of \$10 per share plus an increment of \$1.00 per year, prorated to the nearest month, running from the date of the agreement to the date of conversion. At present, the repurchase price of the Westgate stock obtainable by applicant if it converted the debentures would be about \$35,000. In determining to accept the offer of \$30,000 made by Ewalt, Inc., applicant states it took into account, among other things, the fact that the Small Business Administration might prevent it from exercising its rights under this repurchase agreement; that the debentures were not collateralized other than through unsecured personal guarantees; that Westgate has incurred operating deficits to date and that its potential growth is dependent upon the

continued management by experienced retail drug store operators.

Section 17(a) of the Act, as here pertinent, prohibits and affiliated person of an affiliated person of a registered investment company from purchasing from such registered company securities or property, unless the Commission upon application pursuant to section 17(b), grants an exemption from such provisions upon a finding that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act, and is consistent with the general purposes of the Act.

Notice is further given that any interested person may, not later than December 30, 1963, submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address set forth above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

It is ordered, That the Secretary of the Commission shall send a copy of this notice by registered mail to the Director, Office of Investment, Small Business Administration, Washington, D.C., 20416.

For the Commission (pursuant to delegated authority).

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 63-13167; Filed, Dec. 19, 1963;
8:46 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING EMPLOYMENT OF FULL-TIME STUDENTS WORKING OUTSIDE OF SCHOOL HOURS IN RETAIL OR SERVICE ESTABLISHMENTS AT SPECIAL MINIMUM WAGES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards

Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulation on employment of full-time students (29 CFR Part 519), and Administrative Order No. 579 (28 F.R. 11524), the establishments listed in this notice have been issued special certificates authorizing the employment of full-time students working outside of school hours at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. The effective and expiration dates, type of establishment and total number of employees of the establishment are as indicated below. Pursuant to § 519.6(b) of the regulation, the minimum certificate rates are not less than 85 percent of the minimum applicable under section 6 of the Fair Labor Standards Act.

The following certificates were issued to establishments under paragraph (k) of § 519.6 of 29 CFR, Part 519. These certificates supplement certificates issued pursuant to other paragraphs of that section, but do not authorize the employment of full-time students at rates below \$1.00 an hour in additional occupations. The certificates contain limitations on the percentage of full-time student hours of employment at rates below \$1.00 an hour to total hours of employment of all employees. The additional allowances apply to the specified months and vary from month to month between the minimum and maximum figures indicated.

G. C. Murphy Co., No. 93, 67-71 Main Street, Torrington, Conn.; effective 12-1-63 to 12-31-63; 9.1 percent for the month of December (variety store; 22 employees).

G. C. Murphy Co., No. 461, 411-415 Second Street, Aurora, Ind.; effective 12-1-63 to 12-31-63; 9.6 percent for the month of December (variety store; 21 employees).

G. C. Murphy Co., No. 251, 7075 Cermak Plaza, Berwyn, Ill.; effective 12-1-63 to 12-31-63; 8.7 percent for the month of December (variety store; 128 employees).

G. C. Murphy Co., No. 277, 1127-1137 Mt. Prospect Plaza, Mount Prospect, Ill.; effective 12-1-63 to 12-31-63; 8.7 percent for the month of December (variety store; 47 employees).

G. C. Murphy Co., No. 267, 5732 Baltimore National Pike, Baltimore, Md.; effective 12-1-63 to 9-2-64; between 3.2 percent and 10.8 percent for the months of December, June through September (variety store; 128 employees).

G. C. Murphy Co., No. 436, 138-140 South Cochran Avenue, Charlotte, Mich.; effective 12-1-63 to 12-31-63; 10.1 percent for the month of December (variety store; 31 employees).

G. C. Murphy Co., No. 424, 220-208 North Washington Street, Owosso, Mich.; effective 12-1-63 to 12-31-63; 5.4 percent for the month of December (variety store; 41 employees).

G. C. Murphy Co., No. 120, 807-11 State Street, St. Joseph, Mich.; effective 12-1-63 to 12-31-63; 2.7 percent for the month of December (variety store; 45 employees).

G. C. Murphy Co., No. 161, 156 Apache Plaza, Minneapolis, Minn.; effective 12-1-63 to 12-31-63; 1.8 percent for the month of December (variety store; 66 employees).

G. C. Murphy Co., No. 270, 1566 University Avenue, St. Paul, Minn.; effective 12-1-63 to 8-31-64; between 1.0 percent and 1.8 percent for the months of December, July, August (variety store; 143 employees).

G. C. Murphy Co., No. 139, 25-27 East Washington Street, Washington, N.J.; effective

tive 12-1-63 to 12-31-63; 7.6 percent for the month of December (variety store; 38 employees).

G. C. Murphy Co., No. 249, 26-28 Second Street NW., Hickory, N.C.; effective 12-1-63 to 12-31-63; 7.0 percent for the month of December (variety store; 47 employees).

G. C. Murphy Co., No. 181, 358-64 East Main Street, Alliance, Ohio; effective 12-1-63 to 12-31-63; 3.8 percent for the month of December (variety store; 29 employees).

G. C. Murphy Co., No. 65, 330-20 Belmont Street, Bellaire, Ohio; effective 12-1-63 to 12-31-63; 4.3 percent for the month of December (variety store; 57 employees).

G. C. Murphy Co., No. 452, 109-111 South Main Street, Fostoria, Ohio; effective 12-1-63 to 12-31-63; 11.3 percent for the month of December (variety store; 20 employees).

G. C. Murphy Co., No. 441, 245-247 South Main Street, Franklin, Ohio; effective 12-1-63 to 12-31-63; 3.4 percent for the month of December (variety store; 27 employees).

G. C. Murphy Co., No. 460, 101 Harding Way West, Gallion, Ohio; effective 12-1-63 to 12-31-63; 2.2 percent for the month of December (variety store; 21 employees).

G. C. Murphy Co., No. 459, 215-217 Broadway, Jackson, Ohio; effective 12-1-63 to 12-31-63; 1.2 percent for the month of December (variety store; 33 employees).

G. C. Murphy Co., No. 446, 15-17 South Broadway, Lebanon, Ohio; effective 12-1-63 to 12-31-63; 3.4 percent for the month of December (variety store; 45 employees).

G. C. Murphy Co., No. 230, 228 West Center Street, Marion, Ohio; effective 12-1-63 to 12-31-63; 3.5 percent for the month of December (variety store; 58 employees).

G. C. Murphy Co., No. 434, 107-109 Main Street (Zone 5), Toledo, Ohio; effective 12-1-63 to 12-31-63; 7.3 percent for the month of December (variety store; 46 employees).

G. C. Murphy Co., No. 187, 3345 Mahoning Avenue, Youngstown, Ohio; effective 12-1-63 to 12-31-63; 1.6 percent for the month of December (variety store; 51 employees).

G. C. Murphy Co., No. 222, 2630 South Market Street, Youngstown, Ohio; effective 12-1-63 to 12-31-63; 1.0 percent for the month of December (variety store; 37 employees).

G. C. Murphy Co., No. 78, 16-18 South Broadway, Bangor, Pa.; effective 12-1-63 to 12-31-63; 7.2 percent for the month of December (variety store; 29 employees).

G. C. Murphy Co., No. 188, 1006-08 Philadelphia Avenue, Barnesboro, Pa.; effective 12-1-63 to 12-31-63; 3.6 percent for the month of December (variety store; 35 employees).

G. C. Murphy Co., No. 32, 1100-06 Seventh Avenue, Beaver Falls, Pa.; effective 12-1-63 to 12-31-63; 4.0 percent for the month of December (variety store; 70 employees).

G. C. Murphy Co., No. 88, 559-65 Miller Avenue, Clairton, Pa.; effective 12-1-63 to 5-31-64; between 1.8 percent and 8.8 percent for the months of December, May (variety store; 31 employees).

G. C. Murphy Co., No. 124, 114-116 East Main Street, Everett, Pa.; effective 12-1-63 to 12-31-63; 4.1 percent for the month of December (variety store; 26 employees).

G. C. Murphy Co., No. 3, 133-45 South Main Street, Greensburg, Pa.; effective 12-1-63 to 12-31-63; 1.0 percent for the month of December (variety store; 78 employees).

G. C. Murphy Co., No. 211, 305-308 Alleghany Street, Hollidaysburg, Pa.; effective 12-1-63 to 12-31-63; 2.6 percent for the month of December (variety store; 31 employees).

G. C. Murphy Co., No. 9, 212-220 Market Street, Kittanning, Pa.; effective 12-1-63 to 12-31-63; 1.0 percent for the month of December (variety store; 86 employees).

G. C. Murphy Co., No. 79, 101-05 North First Street, Leighton, Pa.; effective 12-1-63 to 12-31-63; 2.0 percent for the month of December (variety store; 39 employees).

G. C. Murphy Co., No. 59, 2 East Market Street, Lewistown, Pa.; effective 12-1-63 to 12-31-63; 2.8 percent for the month of December (variety store; 106 employees).

G. C. Murphy Co., No. 116, 105-11 South Diamond, Ligonier, Pa.; effective 12-1-63 to 12-31-63; 8.9 percent for the month of December (variety store; 19 employees).

G. C. Murphy Co., No. 16, 226-28 Chestnut Street, Meadville, Pa.; effective 12-1-63 to 12-31-63; 1.7 percent for the month of December (variety store; 64 employees).

G. C. Murphy Co., No. 146, 31 West Shirley Street, Mount Union, Pa.; effective 12-1-63 to 12-31-63; 3.1 percent for the month of December (variety store; 29 employees).

G. C. Murphy Co., No. 233, Heights Plaza, Broadview Boulevard, Natrona Heights, Pa.; effective 6-1-64 to 6-30-64; 1.0 percent for the month of June (variety store; 74 employees).

G. C. Murphy Co., No. 193, 23-25 Belvidere Street, Nazareth, Pa.; effective 12-1-63 to 12-31-63; 2.6 percent for the month of December (variety store; 20 employees).

G. C. Murphy Co., No. 163, 719-23 East Ohio Street, North Side, Pittsburgh, Pa.; effective 12-1-63 to 6-30-64; between 1.0 percent and 7.3 percent for the months of December, January, March, May, June (variety store; 46 employees).

G. C. Murphy Co., No. 170, 221-23 Brownsville Road, Pittsburgh, Pa.; effective 12-1-63 to 12-31-63; 12.0 percent for the month of December (variety store; 42 employees).

G. C. Murphy Co., No. 258, East Hills Center, Robinson Boulevard and Frankstown Road, Pittsburgh, Pa.; effective 5-1-64 to 5-31-64; 1.9 percent for the month of May (variety store; 98 employees).

G. C. Murphy Co., No. 196, 6019-23 Penn Avenue, Pittsburgh, Pa.; effective 12-1-63 to 12-31-63; 4.3 percent for the month of December (variety store; 76 employees).

G. C. Murphy Co., No. 39, 708-12 Penn Avenue, Wilkinsburg, Pittsburgh, Pa.; effective 12-1-63 to 12-31-63; 1.0 percent for the month of December (variety store; 35 employees).

G. C. Murphy Co., No. 61, 4847-49 Second Avenue, Pittsburgh, Pa.; effective 12-1-63 to 12-31-63; 10.6 percent for the month of December (variety store; 19 employees).

G. C. Murphy Co., No. 85, 31-37 Erie Avenue, St. Marys, Pa.; effective 12-1-63 to 12-31-63; 9.9 percent for the month of December (variety store; 34 employees).

G. C. Murphy Co., No. 118, 1-3-5 East King Street, Shippensburg, Pa.; effective 12-1-63 to 12-31-63; 1.0 percent for the month of December (variety store; 34 employees).

G. C. Murphy Co., No. 288, 202 Walnut Street, Abilene, Tex.; effective 12-1-63 to 12-31-63; 8.3 percent for the month of December (variety store; 40 employees).

G. C. Murphy Co., No. 286, 13th and Avenue J, Lubbock, Tex.; effective 12-1-63 to 12-31-63; 8.3 percent for the month of December (variety store; 28 employees).

G. C. Murphy Co., No. 294, 619 North Grant Avenue, Odessa, Tex.; effective 12-1-63 to 12-31-63; 8.3 percent for the month of December (variety store; 39 employees).

G. C. Murphy Co., No. 241, 3654-58 King Street, Bradlee Shopping Center, Alexandria, Va.; effective 12-1-63 to 4-30-64; between 1.0 percent and 3.4 percent for the months of December through April (variety store; 50 employees).

G. C. Murphy Co., No. 198, 616-18 King Street, Alexandria, Va.; effective 12-1-63 to 12-31-63; 4.1 percent for the month of December (variety store; 103 employees).

G. C. Murphy Co., No. 156, 642 Jefferson Davis Highway, Woodbridge, Va.; effective 12-1-63 to 4-30-64; between 1.0 percent and 3.4 percent for the months of December through April (variety store; 43 employees).

G. C. Murphy Co., No. 22, 97-103 North Main Street, Keyser, W. Va.; effective 12-1-63 to 12-31-63; 10.8 percent for the month of December (variety store; 50 employees).

G. C. Murphy Co., No. 212, 712-714 Market Street, Parkersburg, W. Va.; effective 12-1-63 to 12-31-63; 10.0 percent for the month of December (variety store; 96 employees).

G. C. Murphy Co., No. 154, 995-997 Mercer Street, Princeton, W. Va.; effective 12-1-63 to 12-31-63; 3.2 percent for the month of December (variety store; 57 employees).

G. C. Murphy Co., No. 18, Jefferson and Third Street, Moundsville, W. Va.; effective 12-1-63 to 12-31-63; 5.3 percent for the month of December (variety store; 33 employees).

G. C. Murphy Co., No. 162, 3200-10 Main Street (Cove Station), Weirton, W. Va.; effective 12-1-63 to 12-31-63; 1.4 percent for the month of December (variety store; 37 employees).

G. C. Murphy Co., No. 131, 54 Second Avenue, Williamson, W. Va.; effective 12-1-63 to 12-31-63; 1.6 percent for the month of December (variety store; 64 employees).

Neisner Bros., Inc., No. 48, 1001 16th Street, Denver, Colo.; effective 12-1-63 to 12-31-63; 3.8 percent for the month of December (variety store; 20 employees).

Neisner Bros., Inc., No. 183, 811 North Seventh Street, Dade City, Fla.; effective 12-1-63 to 12-31-63; 9.3 percent for the month of December (variety store; 11 employees).

Neisner Bros., Inc., No. 158, 230 Southwest 40th Avenue, Fort Lauderdale, Fla.; effective 12-1-63 to 12-31-63; 1.0 percent for the month of December (variety store; 24 employees).

Neisner Bros., Inc., No. 166, 4545 Shirley Avenue, Jacksonville, Fla.; effective 12-1-63 to 12-31-63; 9.5 percent for the month of December (variety store; 10 employees).

Neisner Bros., Inc., No. 187, 314 South Highway 19, New Port Richey, Fla.; effective 12-1-63 to 12-31-63; 9.3 percent for the month of December (variety store; 28 employees).

Neisner Bros., Inc., No. 184, 1101 Eighth Avenue, Palmetto, Fla.; effective 12-1-63 to 12-31-63; 9.3 percent for the month of December (variety store; 15 employees).

Neisner Bros., Inc., No. 85, 2300 South 31st Street, St. Petersburg, Fla.; effective 12-1-63 to 12-31-63; 9.3 percent for the month of December (variety store; 12 employees).

Neisner Bros., Inc., No. 147, 3902 Britton Plaza, Tampa, Fla.; effective 12-1-63 to 12-31-63; 9.3 percent for the month of December (variety store; 23 employees).

Neisner Bros., Inc., No. 49, 3268 West Madison Street, Chicago, Ill.; effective 12-1-63 to 12-31-63; 4.5 percent for the month of December (variety store; 24 employees).

Neisner Bros., Inc., No. 65, 501 West North Avenue, Chicago, Ill.; effective 12-1-63 to 12-31-63; 3.3 percent for the month of December (variety store; 28 employees).

Neisner Bros., Inc., No. 30, 5254 North Clark Street, Chicago, Ill.; effective 12-1-63 to 12-31-63; 1.0 percent for the month of December (variety store; 18 employees).

Neisner Bros., Inc., No. 76, 3548 Irving Park Boulevard, Chicago, Ill.; effective 12-1-63 to 12-31-63; 2.3 percent for the month of December (variety store; 20 employees).

Neisner Bros., Inc., No. 81, 703 Main Street, Dubuque, Iowa; effective 12-1-63 to 12-31-63; 1.0 percent for the month of December (variety store; 27 employees).

Neisner Bros., Inc., No. 83, 407 Fourth Street, Sioux City, Iowa; effective 12-1-63 to 12-31-63; 5.3 percent for the month of December (variety store; 21 employees).

Neisner Bros., Inc., No. 32, 7769 Vernor Highway West, Detroit, Mich.; effective 12-1-63 to 12-31-63; 4.5 percent for the month of December (variety store; 19 employees).

Neisner Bros., Inc., No. 63, 5848 West Fort Street, Detroit, Mich.; effective 12-1-63 to 12-31-63; 3.5 percent for the month of December (variety store; 14 employees).

Neisner Bros., Inc., No. 3, 22651 Gratiot Avenue, East Detroit, Mich.; effective 12-1-

63 to 12-31-63; 1.0 percent for the month of December (variety store; 9 employees).

Neisner Bros., Inc., No. 73, 3106 Biddle Avenue, Wyandotte, Mich.; effective 12-1-63 to 12-31-63; 1.0 percent for the month of December (variety store; 39 employees).

Neisner Bros., Inc., No. 70, 308 South 16th Street, Omaha, Neb.; effective 12-1-63 to 12-31-63; 10.4 percent for the month of December (variety store; 31 employees).

Neisner Bros., Inc., No. 127, 100 Broadway, East Paterson, N.J.; effective 12-1-63 to 12-31-63; 10.1 percent for the month of December (variety store; 38 employees).

Neisner Bros., Inc., No. 149, 1151 Highway 35, Middletown, N.J.; effective 12-1-63 to 12-31-63; 2.3 percent for the month of December (variety store; 26 employees).

Neisner Bros., Inc., No. 142, 2461 Brunswick Pike, Trenton, N.J.; effective 12-1-63 to 12-31-63; 2.3 percent for the month of December (variety store; 22 employees).

Neisner Bros., Inc., No. 128, 3310 Warren Road, Cleveland, Ohio; effective 12-1-63 to 12-31-63; 6.4 percent for the month of December (variety store; 15 employees).

Neisner Bros., Inc., No. 53, 1920 West 25th Street, Cleveland, Ohio; effective 12-1-63 to 12-31-63; 2.7 percent for the month of December (variety store; 14 employees).

Neisner Bros., Inc., No. 114, 133 East Market Street, Sandusky, Ohio; effective 12-1-63 to 12-31-63; 4.9 percent for the month of December (variety store; 20 employees).

Neisner Bros., Inc., No. 75, 45 Parkdale Plaza, Corpus Christi, Tex.; effective 12-1-63 to 12-31-63; 19.0 percent for the month of December (variety store; 21 employees).

Neisner Bros., Inc., No. 170, 1100 South Santa Fe Street, El Paso, Tex.; effective 12-1-63 to 12-31-63; 9.8 percent for the month of December (variety store; 38 employees).

Neisner Bros., Inc., No. 120, 101 Broadway, San Antonio, Tex.; effective 12-1-63 to 12-31-63; 13.1 percent for the month of December (variety store; 71 employees).

Neisner Bros., Inc., No. 61, 710 McClellan Plaza, San Antonio, Tex.; effective 12-1-63 to 12-31-63; 13.2 percent for the month of December (variety store; 33 employees).

Neisner Bros., Inc., No. 141, 149 Plaza De Las Palmas, San Antonio, Tex.; effective 12-1-63 to 12-31-63; 2.3 percent for the month of December (variety store; 58 employees).

Neisner Bros., Inc., No. 134, 2907 Garnett Avenue, Wichita Falls, Tex.; effective 12-1-63 to 12-31-63; 3.5 percent for the month of December (variety store; 17 employees).

Each certificate has been issued upon the representations of the employer which, among other things, were that employment of full-time students at special minimum rates is necessary to prevent curtailment of opportunities for employment, and the hiring of full-time students at special minimum rates will not tend to displace full-time employees. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 519.9.

Signed at Washington, D.C., this 12th day of December 1963.

ROBERT G. GRONEWALD,
Authorized Representative of
the Administrator.

[F.R. Doc. 63-13164; Filed, Dec. 19, 1963;
8:46 a.m.]

CERTIFICATES AUTHORIZING EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), and Administrative Order No. 579 (28 F.R. 11524) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. The effective and expiration dates, occupations, wage rates, number or proportion of learners and learning periods, for certificates issued under general learner regulations (29 CFR 522.1 to 522.9), and the principal product manufactured by the employer are as indicated below. Conditions provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.20 to 522.25, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

The Arrow Co., 1221 West Third Street, Williamsport, Pa.; effective 12-8-63 to 12-7-64 (men's sport shirts).

Bayly Manufacturing Co., 1121 Annadale Street, Sanger, Calif.; effective 12-5-63 to 12-4-64 (men's, boys', and women's jeans).

Blue Bell, Inc., 450 East Barnes Street, Bushnell, Ill.; effective 12-9-63 to 12-8-64 (men's cotton trousers).

Blue Bell, Inc., Lenoir, N.C.; effective 12-1-63 to 11-30-64 (boys' and ladies' dungarees).

M. Fine and Sons Manufacturing Co., Inc., 15th and Main Streets, New Albany, Ind.; effective 12-7-63 to 12-6-64 (men's work shirts).

Frances Gee Garment Co., Inc., Higginsville, Mo.; effective 12-9-63 to 12-8-64 (ladies' uniforms).

Garan Sportswear, Inc., Adamsville, Tenn.; effective 12-7-63 to 12-6-64 (men's and boys' sport shirts).

Glen of Michigan, Division, Glen Manufacturing Inc., 77 Hancock Street, Manistee, Mich.; effective 12-6-63 to 12-5-64; Learners may not be employed at special minimum wages in the production of skirts (women's and misses' dresses and blouses and children's outerwear).

The Hercules Trouser Co., Hillsboro, Ohio; effective 12-1-63 to 11-30-64 (men's and boys' single pants).

The Jay Garment Co., Portland, Ind.; effective 12-4-63 to 12-3-64 (men's work clothing and boys' pants).

Liberty Manufacturing Corp., Liberty, Ky.; effective 12-8-63 to 12-7-64 (boys' sport shirts).

McAdoo Manufacturing Co., Inc., South Hancock Street, McAdoo, Pa.; effective 12-6-63 to 12-5-64 (children's polo shirts).

Manchester Pants Co., Manchester, Md.; effective 12-3-63 to 12-2-64; Learners may not be employed at special minimum wage rates in the production of suit pants (men's and boys' trousers).

The Manhattan Shirt Co., Tripp Street, Americus, Ga.; effective 12-4-63 to 12-3-64 (men's dress shirts).

The Manhattan Shirt Co., Leeds Avenue, Charleston Heights, S.C.; effective 12-4-63 to 12-3-64 (men's and boys' dress shirts).

Mayflower Manufacturing Co., Inc., 460-506 North Main Avenue, Scranton, Pa.; effective 12-12-63 to 12-11-64 (boys' and students' trousers).

Petersburg Manufacturing Co., Petersburg, W. Va.; effective 12-21-63 to 12-20-64 (children's sportswear—shirts and pants).

Phillips-Van Heusen Corp., Brinkley, Ark.; effective 12-2-63 to 12-1-64 (men's dress shirts).

Salant & Salant Inc., Henderson, Tenn.; effective 12-13-63 to 12-12-64 (men's cotton work shirts).

Samsons Manufacturing Corp., 525 East Fifth Street, Washington, N.C.; effective 12-17-63 to 12-16-64 (men's sport shirts).

Shane Manufacturing Co., Boys' Wear Division, 1500 West Franklin Street, Evansville, Ind.; effective 12-9-63 to 12-8-64 (boys' pants, shirts, and outerwear jackets).

J. M. Wood Manufacturing Co., Inc., 403 East Black Jack Street, Dublin, Tex.; effective 12-4-63 to 12-3-64 (men's shirts).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Acme Garment Co., Fifth and Elm Streets, Wentzville, Mo.; effective 12-7-63 to 12-6-64; 10 learners; Learners may not be employed at special minimum wage rates in the production of skirts (women's pants, coveralls, and shifts).

Allee-Barry, Inc., Columbus, Kans.; effective 12-8-63 to 12-7-64; 10 learners (boys' and youths' semidress pants).

Blain Products, Inc., Blain, Pa.; effective 12-9-63 to 12-8-64; 5 learners (ladies' nightwear).

Ellore Garment Corp., Ellore, S.C.; effective 12-4-63 to 12-3-64; 10 learners (ladies' nightwear).

Garan, Inc., Starkville Division, Starkville, Miss.; effective 12-5-63 to 12-4-64; 10 learners (men's and boys' sport shirts).

The Jay Garment Co., Brookville, Ind.; effective 12-4-63 to 12-3-64; 10 learners (children's overalls and boys' pants).

The Loudon Manufacturing Co., d.b.a. Emmitsburg Manufacturing Co., Emmitsburg, Md.; effective 12-8-63 to 12-7-64; 10 learners (men's trousers).

Society Lingerie Co., Inc., Springfield and Roske Avenues, Michigan City, Ind.; effective 12-3-63 to 12-2-64; 10 learners (women's lingerie, slips, and petticoats).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Acme Garment Co., Fifth and Elm Streets, Wentzville, Mo.; effective 12-7-63 to 6-6-64; 20 learners. Learners may not be employed at special minimum wage rates in the production of skirts (women's pants, coveralls, and shifts).

Armored Garments, Inc., 223 Cabin Road, Spruce Pine, N.C.; effective 12-5-63 to 6-4-64; 10 learners (boys' dungarees).

Campdown Togs, Inc., Clanton, Ala.; effective 12-4-63 to 6-3-64; 40 learners (girls' shirts and blouses and infants' and boys' knitted shirts).

Hicks Ponder Co., Harold at Main, Eagle Pass, Tex.; effective 12-4-63 to 6-3-64; 50 learners (men's and boys' work clothing and wash slacks).

Lake Overall Manufacturers, 413 Phoenix Street, South Haven, Mich.; effective 12-7-63 to 6-6-64; 5 learners (men's and boys' denim pants).

The NuBone Co., Inc., 25th and Ash Streets, Erie, Pa.; effective 12-5-63 to 6-4-64; 20 learners (women's foundation garments and infants' and children's wear).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.60 to 522.65, as amended).

Sam Gold, 2106 West Central Avenue, Orlando, Fla.; effective 12-5-63 to 12-4-64; 6 learners for normal labor turnover purposes (men's and ladies' leather gloves).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.30 to 522.35, as amended).

Denton Knitting Mills, Inc., Denton, N.C.; effective 12-9-63 to 6-8-64; 6 learners for plant expansion purposes (ladies' and children's panties).

I. Mathews & Bros., 64 Conduit Street, New Bedford, Mass.; effective 12-2-63 to 12-1-64; 5 learners for normal labor turnover purposes (children's and ladies' panties).

Van Realte Company, Inc., Bristol, Vt.; effective 12-6-63 to 12-5-64; 5 percent of the total number of factory production workers for normal labor turnover purposes (women's nylon Tricot underwear).

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in 29 CFR Part 528.

Signed at Washington, D.C., this 13th day of December 1963.

ROBERT G. GRONEWALD,
Authorized Representative
of the Administrator.

[F.R. Doc. 63-13165; Filed, Dec. 19, 1963;
8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 914]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 17, 1963.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR, Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by

petitioners must be specified in their petitions with particularity.

No. MC-FC 66144. By order of December 12, 1963, the Transfer Board approved the transfer to Owen W. Peterson and Billy G. Peterson, a partnership, doing business as Salmon River Stages, Blackfoot, Idaho, of Certificate in No. MC 105154 (Sub-No. 4) issued January 10, 1963, to Robert G. Wright, doing business as Star Valley-Jackson Stages, Idaho Falls, Idaho, authorizing the transportation, over regular routes, of passengers and their baggage, and express and newspapers, in the same vehicle with passengers, between Idaho Falls, Idaho, and Salmon, Idaho, serving all intermediate points, and the off-route point of Gilmore, Idaho; between Roberts, Idaho, and Idaho Falls, Idaho, serving all intermediate points; and between junction Idaho Highway 28 and unnumbered highway (known as Pole Line Road), and the site of the Atomic Energy Plant, serving all intermediate points. Dennis M. Olsen, 520 D Street, Idaho Falls, Idaho, 83402, representative for applicants.

No. MC-FC 66238. By order of December 12, 1963, the Transfer Board approved, on reconsideration, the transfer to G & S Trucking, Inc., Cleveland Heights, Ohio, of the operating rights in Permit in No. MC 124497, issued by the Commission February 7, 1963, to Marvin Kahn, doing business as G & S Trucking, Cleveland Heights, Ohio, authorizing the transportation, over irregular routes, of refractories, including but not limited to fire brick (plastic and other plastic), fire clay, mortar or cement (high temperature bonding), kiln or furnace lining, from the plant sites of North American Refractories Co., at Ashland, Ky., and Curwensville, Little Gap, Mount Union, and Womelsdorf, Pa., to the warehouses of North American Refractories Co., and Cleveland, Ohio, and wooden pallets or shipping containers, and materials and supplies used or useful in the manufacture of refractories, from the warehouses of North American Refractories Co., at Cleveland, Ohio, to the plant sites of North American Refractories Co., at Ashland, Ky., and Curwensville, Little Gap, Mount Union, and Womelsdorf, Pa. Frank J. Gavin, Jr., 935 Williamson Building, Cleveland 14, Ohio, attorney for applicants.

No. MC-FC 66335. By order of December 13, 1963, the Transfer Board approved the transfer to Robert R. Kennedy and Lois J. Kennedy, a partnership, doing business as Kennedy Transfer, Du Bois, Pa., of the operating rights in Certificate in No. MC 84663, issued February 23, 1944, to A. B. Kennedy, doing business as Kennedy Transfer, Du Bois, Pa., authorizing the transportation, over irregular routes, of household goods, between Du Bois, Pa., on the one hand, and, on the other, Olean and Buffalo, N.Y., Cleveland and Youngstown, Ohio, points within 15 miles of Cleveland, and those within 15 miles of Youngstown. Ernest W. Baum, 7-10

Damus Building, Du Bois, Pa., attorney for applicants.

No. MC-FC 66386. By order of December 13, 1963, the Transfer Board approved the transfer to John Pietrowicz, doing business as Triboro Trucking Company, Carlstadt, N.J., of the operating rights in Certificate in No. MC 6516, issued February 3, 1941, to Litchhult Trucking Co., Inc., New York, N.Y., authorizing the transportation over irregular routes of watermelons, from Kearny, N.J., to New York, N.Y., and food products, oil, seed, coconuts, arabic and karaya gum, paint, paint material, enamel, lacquer, varnish, stain, varnish remover, and printing paper, between New York, N.Y., on the one hand, and, on the other, points in New Jersey within 20 miles of City Hall, New York, N.Y. Robert B. Pepper, 880 Bergen Avenue, Jersey City, N.J., representative for applicants.

No. MC-FC 66415. By order of December 13, 1963, the Transfer Board approved the transfer to James Dieter and James Gravel, a partnership, doing business as Jerry's Service, Rural Free Delivery, Zion, Ill., of the operating rights issued by the Commission May 19, 1959, under Certificate in No. MC 115587 to Jerome S. Lefco, doing business as Jerry's Service, U.S. 41 and Ill. 173, Rural Free Delivery, Zion, Ill., authorizing the transportation over irregular routes, of wrecked or disabled motor vehicles (excluding trailers designated to be drawn by passenger automobiles), between points in Racine and Kenosha Counties, Wis., on the one hand, and, on the other, points in Illinois, and Indiana, between points in Illinois, on the one hand, and, on the other, points in Indiana.

No. MC-FC 66459. By order of December 13, 1963, the Transfer Board approved the transfer to Duane Thompson, Osage City, Kans., of the Certificate in No. MC 58143 (Sub-No. 1) issued September 11, 1945, to Ross Justus, doing business as Justus Truck Line, Eskridge, Kans., authorizing the transportation over irregular routes of livestock, between Eskridge, Kans., and points within 15 miles of Eskridge, other than incorporated cities and villages, on the one hand, and, on the other, Kansas City, Kans., Kansas City and St. Joseph, Mo.; feed, from Kansas City, Kans., North Kansas City, Kansas City and St. Joseph, Mo., to Eskridge, Kans., and points within 15 miles of Eskridge, other than incorporated cities and villages; agricultural machinery and parts, between Eskridge, Kans., and points within 15 miles of Eskridge, other than incorporated cities and villages, on the one hand, and, on the other, Kansas City, Mo.; fencing, seed, roofing, twine, and wire, from North Kansas City and Kansas City, Mo., to Eskridge, Kans., and points within 15 miles of Eskridge, Kans., other than incorporated cities and villages. John E. Jandera, 641 Harrison, Topeka, Kans., attorney for applicants.

No. MC-FC 66466. By order of December 13, 1963, the Transfer Board ap-

proved the transfer to Pasha Truckaway, a corporation, San Francisco, Calif., of the operating rights in Certificate in No. MC 116260, issued October 4, 1957, to George Pasha, doing business as Pasha Truckaway & Overseas Car Processing Co., Pleasantown, Calif., authorizing the transportation, over irregular routes, of: Used passenger automobiles, from Parks Air Force Base and Travis Air Force Base, Calif., to San Francisco and Oakland, Calif. Frank Loughran, 100 Bush Street, San Francisco, Calif., attorney for applicants.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 63-13174; Filed, Dec. 19, 1963;
8:47 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 17, 1963.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 38713: *Superphosphate to Nashville, Tenn.* Filed by O. W. South, Jr., agent (No. A4420), for and on behalf of Atlantic Coast Line Railroad Company and other interested rail carriers. Rates on superphosphate, not defluorinated superphosphate, nor feed grade superphosphate, in carloads, from producing points in Florida to Nashville, Tenn.

Grounds for relief: Rail-barge-truck competition.

Tariff: Supplement 91 to Southern Freight Association, agent, tariff I.C.C. S-88.

FSA No. 38714: *Liquefied chlorine gas to Nixon, Ga.* Filed by O. W. South, Jr.,

agent (No. A4421), for and on behalf of Atlantic Coast Line Railroad Company and Central of Georgia Railway Company. Rates on liquefied chlorine gas, in tank carloads, from Acme, N.C., to Nixon, Ga.

Grounds for relief: Market competition.

Tariff: Supplement 64 to Southern Freight Association, agent, tariff I.C.C. S-207.

FSA No. 38715: *Liquid caustic soda to Nixon, Ga.* Filed by O. W. South, Jr., agent (No. A4422), for and on behalf of Atlantic Coast Line Railroad Company and Central of Georgia Railway Company. Rates on liquid caustic soda, in tank carloads, from Acme, N.C., to Nixon, Ga.

Grounds for relief: Market competition.

Tariff: Supplement 64 to Southern Freight Association, agent, tariff I.C.C. S-207.

FSA No. 38716: *Liquid caustic soda to Enka and Pisgah Forest, N.C.* Filed by O. W. South, Jr., agent (No. A4423) for and on behalf of Seaboard Air Line Railroad Company and Southern Railway Company. Rates on liquid caustic soda, in tank carloads, from Acme and Wilmington, N.C., to Enka and Pisgah Forest, N.C.

Grounds for relief: Market competition.

Tariff: Supplement 64 to Southern Freight Association, agent, tariff I.C.C. S-207.

FSA No. 38717: *Crude phosphate rock to Pace, Fla.* Filed by O. W. South, Jr., agent (No. A4424), for and on behalf of Atlantic Coast Line Railroad Company and Louisville and Nashville Railroad Company. Rates on crude phosphate rock (other than ground phosphate rock), in carloads, from producing points in Florida to Pace, Fla.

Grounds for relief: Rail-barge-truck competition.

Tariff: Supplement 56 to Southern Freight Association, agent, tariff I.C.C. S-140.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 63-13173; Filed, Dec. 19, 1963;
8:47 a.m.]

[Rev. Ser. Order No. 562; Taylor's I.C.C.
Order No. 136; Amdt. 13]

RUTLAND RAILROAD CORP.

Rerouting of Traffic

Upon further consideration of Taylor's I.C.C. Order No. 136 (Rutland Railroad Corporation) and good cause appearing therefor:

It is ordered, That:

Taylor's I.C.C. Order No. 136 be, and it hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) Expiration date: This order shall expire at 11:59 p.m., March 31, 1964, unless otherwise modified, changed, suspended or annulled.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1963, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement, and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 17, 1963.

[SEAL] INTERSTATE COMMERCE
COMMISSION,
CHARLES W. TAYLOR,
Agent.

[F.R. Doc. 63-13175; Filed, Dec. 19, 1963;
8:48 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

1 CFR	Page	7 CFR—Continued	Page	14 CFR—Continued	Page
CFR CHECKLIST-----	12791	1421-----	13293, 13294, 13391	PROPOSED RULES—Continued	
3 CFR		1427-----	12794	75 [New]-----	12944, 13319, 13789
PROCLAMATIONS:		1434-----	13297	77 [New]-----	12828
2761A-----	13247	1464-----	13391	91 [New]-----	13786
3019-----	12785	1482-----	12923	288-----	13460
3460-----	12785	PROPOSED RULES:		298-----	13311
3548-----	12785	29-----	13315	507-----	12945
3562-----	12785	811-----	13363	514-----	13549, 13786
3563-----	12895	907-----	13899		
3564-----	13247	971-----	13786	15 CFR	
EXECUTIVE ORDERS:		984-----	13505	371-----	13770
May 27, 1913-----	13865	993-----	12870, 13505	399-----	13770
Feb. 25, 1919-----	13307	999-----	12827, 13267	16 CFR	
6964-----	13306	1005-----	13899	13-----	12795, 12926,
7951-----	13306	1034-----	13899	12927, 13392, 13449, 13864, 13865	
11129-----	12787	1035-----	13899	75-----	13770
11130-----	12789	1037-----	13899	PROPOSED RULES:	
11131-----	13485	1046-----	13902	404-----	13793
11132-----	13533	1049-----	13899	17 CFR	
11133-----	13835	1094-----	13752	PROPOSED RULES:	
4 CFR		1193-----	13460	240-----	12829
33-----	12923	8 CFR		18 CFR	
34-----	12924	231-----	13741	2-----	12865, 12866, 13547
5 CFR		251-----	13741	11-----	12795
213-----	12901, 13277, 13437, 13535, 13739	299-----	13741	157-----	12866
550-----	13437	9 CFR		PROPOSED RULES:	
6 CFR		74-----	13544	2-----	12945, 13505
321-----	13335	201-----	13742	10-----	13506
322-----	13343	PROPOSED RULES:		16-----	13505
323-----	13343	74-----	13549	19 CFR	
327-----	13335	10 CFR		1-----	13837
341-----	13355	PROPOSED RULES:		4-----	13359
392-----	13335	30-----	13842	6-----	13546
7 CFR		12 CFR		8-----	13546
29-----	13277	218-----	13437	10-----	13546
33-----	12901	PROPOSED RULES:		Appendix A-----	13393
215-----	12791	15-----	13868	PROPOSED RULES:	
301-----	12792	523-----	13549	1-----	13548
318-----	13280, 13281, 13391	13 CFR		4-----	13311
401-----	13863	127-----	13545	12-----	12870
717-----	13249	PROPOSED RULES:		24-----	12870
722-----	13282, 13291, 13535, 13538	107-----	13267	20 CFR	
730-----	12792, 13254	121-----	13320	239-----	13838
817-----	13356	14 CFR		345-----	13360
831-----	13863	Ch. I-----	12924	614-----	12928
847-----	13292	1-----	12924, 13394	21 CFR	
873-----	13739	9-----	13394	1-----	13745
905-----	13538-13540	9a-----	13395	8-----	13488, 13745
907-----	13292, 13540, 13541, 13769	71 [New]-----	12925,	20-----	13448
909-----	13541	13297, 13357-13359, 13396, 13438,		120-----	12867
910-----	13293, 13487, 13542	13742, 13769, 13864.		121-----	12928,
925-----	13543	73 [New]-----	13297, 13742	13360, 13488, 13745, 13774, 13838	
945-----	13543	95 [New]-----	13438	141d-----	13360
947-----	13543	97 [New]-----	13442	146-----	13838
958-----	12851	185 [New]-----	13743	146a-----	12868
965-----	13769	297-----	12864	146d-----	13449
971-----	13487	301-----	13298	146d-----	13360
989-----	13544	507-----	12926, 13743, 13837	147-----	13774
1002-----	12902	PROPOSED RULES:		PROPOSED RULES:	
1003-----	13357	4b-----	13786	120-----	12938
1004-----	12922	14-----	13460	146-----	13505
1005-----	12922	35 [New]-----	13460	24 CFR	
1014-----	13741	40-----	13786	200-----	13865
1015-----	12922, 13741	41-----	13786	203-----	13744
1016-----	13357	42-----	13786	207-----	13304, 13744
1096-----	12793	71 [New]-----	12938,	213-----	13305
1106-----	12851	12940-12944, 13319, 13366, 13368,		220-----	13305, 13744
1132-----	13448	13462, 13463, 13465, 13789.		221-----	13305
1400-----	13293				

24 CFR—Continued

231	13305
232	13306
803	13306, 13745

25 CFR**PROPOSED RULES:**

21	13548
22	13548
31	13548
32	13548

26 CFR

1	12796, 12817, 13450
31	13745
48	12928
49	12928
250	12930

PROPOSED RULES:

1	12824, 13749, 13786, 13868, 13890
301	13750

28 CFR

0	13769
---	-------

29 CFR

30	13775
526	13489

PROPOSED RULES:

526	12938
545	13312
681	13312

30 CFR

501	12868
-----	-------

32 CFR

252	12868
561	12937, 13361
563	13400
761	13778
887	13263

33 CFR

82	13503
202	13784
204	13784
207	13784

38 CFR

2	13489
3	13362, 13489
36	13489

39 CFR

31	12936
----	-------

41 CFR

5-1	13840
9-5	13490
9-7	13264
50-202	12867

42 CFR

51	12937
----	-------

43 CFR

101	12852, 13362
-----	--------------

PROPOSED RULES:

1	13504
---	-------

PUBLIC LAND ORDERS:

797	13507
800	13508
913	13508
1459	12821
2203	13307
3257	13307
3263	13265
3275	12821
3276	12936
3277	13306
3278	13306
3279	13306
3280	13307
3281	13307
3282	13307
3283	13307
3284	13307
3285	13308
3286	13308
3287	13308
3288	13309
3289	13309
3290	13309
3291	13865
3292	13866
3293	13866
3295	13867

44 CFR

184	13451, 13547
-----	--------------

45 CFR

401	13840
500	13495

45 CFR—Continued

501	13496
531	13498
540	13499
541	13499
542	13500
543	13500
560	13501
580	13501

46 CFR

10	13502
38	13502
40	13502
146	12820
309	12897
402	12852

PROPOSED RULES:

523	13369, 13752
527	12870

47 CFR

0	12821, 13746
1	13785
2	13785
3	13572
4	13572
6	13002
21-66	13002
73	13572
74	13572

PROPOSED RULES:

3	13267
7	13370
8	13370
11	13789
21	13789

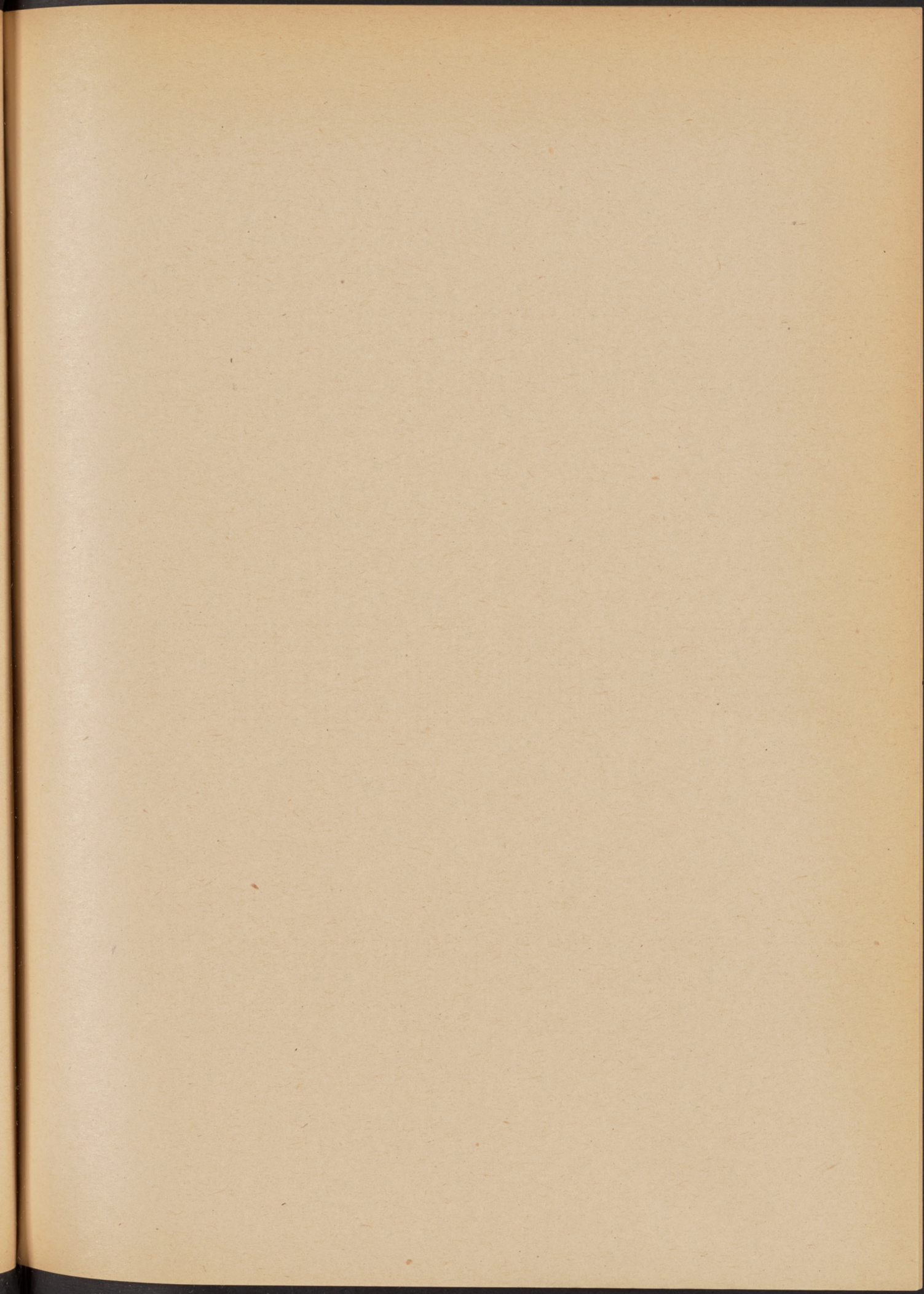
49 CFR

1	12821
77	13265
91	13400
120	13310, 13747
205	13747
301	13747
446	13747

50 CFR

32	12852, 13266
33	13454-13459, 13748, 13840, 13841

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THE HISTORY OF THE UNITED STATES

Vol. I. A. D. 1776.



The first of the United States was the Declaration of Independence, which was adopted by the Continental Congress on July 4, 1776. This document declared the thirteen colonies to be free and independent states, no longer under British rule. The Declaration was a crucial step in the formation of the new nation, as it established the principle of self-government and the right of the people to alter or abolish their form of government.

The second of the United States was the Constitution, which was adopted by the Continental Congress on September 17, 1787. This document established the framework for the federal government, outlining the powers of the executive, legislative, and judicial branches. The Constitution was a landmark achievement, as it created a system of government that has endured for over two centuries.

The third of the United States was the Bill of Rights, which was adopted by the Continental Congress on September 12, 1791. This document guaranteed the first ten amendments to the Constitution, protecting the rights of the people from government interference. The Bill of Rights was a crucial step in the development of the American legal system, as it established the principle of individual liberties.

The fourth of the United States was the Louisiana Purchase, which was completed in 1803. This acquisition doubled the size of the United States, adding a vast territory to the nation's western frontier. The Louisiana Purchase was a major event in American history, as it opened up new opportunities for westward expansion and settlement.

The fifth of the United States was the War of 1812, which was fought between the United States and Great Britain. This conflict was a significant test of the nation's military strength and its ability to defend its territory. The war ended in a draw, but it solidified the United States' status as an independent nation.

The sixth of the United States was the Missouri Compromise, which was passed in 1820. This legislation established a precedent for the admission of new states to the Union, balancing the interests of free and slave states. The Missouri Compromise was a crucial step in the development of the American political system, as it addressed the issue of slavery in the territories.

The seventh of the United States was the Mexican-American War, which was fought between the United States and Mexico from 1846 to 1848. This conflict resulted in the United States gaining a large portion of Mexico's territory, including California and New Mexico. The war was a significant event in American history, as it expanded the nation's western frontier.

The eighth of the United States was the Civil War, which was fought between the United States and the Confederate States of America from 1861 to 1865. This conflict was a major turning point in American history, as it resulted in the abolition of slavery and the preservation of the Union. The Civil War was a crucial step in the development of the American legal system, as it established the principle of equality for all citizens.

The ninth of the United States was the Reconstruction era, which followed the Civil War. This period was characterized by efforts to rebuild the South and integrate African Americans into the political and social system. The Reconstruction era was a crucial step in the development of the American political system, as it addressed the issue of race and equality.

The tenth of the United States was the Progressive era, which was a period of social and political reform in the late 19th and early 20th centuries. This era was characterized by efforts to address social issues such as poverty, child labor, and corruption. The Progressive era was a crucial step in the development of the American political system, as it established the principle of social responsibility.

The eleventh of the United States was the Great Depression, which was a period of economic hardship in the 1930s. This crisis was caused by a combination of factors, including a stock market crash and a global economic downturn. The Great Depression was a crucial step in the development of the American political system, as it led to the implementation of New Deal policies.

The twelfth of the United States was the World War II era, which was a period of global conflict in the 1940s. This war was fought between the United States and the Axis powers, including Germany, Japan, and Italy. The World War II era was a crucial step in the development of the American political system, as it established the principle of international cooperation.

The thirteenth of the United States was the Cold War era, which was a period of tension between the United States and the Soviet Union in the 1950s and 1960s. This era was characterized by a nuclear arms race and a series of proxy wars. The Cold War era was a crucial step in the development of the American political system, as it established the principle of global peace.

The fourteenth of the United States was the Vietnam War era, which was a period of conflict in the 1960s and 1970s. This war was fought between the United States and North Vietnam. The Vietnam War era was a crucial step in the development of the American political system, as it established the principle of self-determination.

The fifteenth of the United States was the Watergate era, which was a period of political scandal in the 1970s. This era was characterized by the resignation of President Richard Nixon. The Watergate era was a crucial step in the development of the American political system, as it established the principle of accountability.

The sixteenth of the United States was the Iran-Contra era, which was a period of political scandal in the 1980s. This era was characterized by the involvement of the Reagan administration in the Iran-Contra affair. The Iran-Contra era was a crucial step in the development of the American political system, as it established the principle of transparency.

The seventeenth of the United States was the Clinton era, which was a period of political and social change in the 1990s. This era was characterized by the presidency of Bill Clinton. The Clinton era was a crucial step in the development of the American political system, as it established the principle of progress.

The eighteenth of the United States was the Bush era, which was a period of political and social change in the 2000s. This era was characterized by the presidency of George W. Bush. The Bush era was a crucial step in the development of the American political system, as it established the principle of leadership.

The nineteenth of the United States was the Obama era, which was a period of political and social change in the 2010s. This era was characterized by the presidency of Barack Obama. The Obama era was a crucial step in the development of the American political system, as it established the principle of hope.

The twentieth of the United States was the Trump era, which was a period of political and social change in the 2020s. This era was characterized by the presidency of Donald Trump. The Trump era was a crucial step in the development of the American political system, as it established the principle of change.

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